

**AFFIRMATIVE ACTION**

**Who's  
Really  
Benefiting?**

**Part**

**3**

**PUBLIC  
CONTRACTING**

Prepared by  
**The Washington State  
Commission on  
African American Affairs**

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## **Answering the Key Question Surrounding Affirmative Action:**

Do people of color and women gain unfair advantage over white men as a result of state efforts to promote contracting opportunities for women and minorities?

This report is the third in a three-part series designed to provide preliminary answers to this vital question surrounding affirmative action as practiced in Washington State government. This report specifically addresses contracting activities and is based primarily on three types of information about public agency contracting: (1) data on contracting expenditures obtained through the Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Financial Management (OFM) for the period 1992-1994; (2) the responses received in a mail survey of 38 state agencies regarding their contracting policies and procedures; and (3) information compiled from discussions and meetings with state agency personnel, from state regulations, executive orders and other secondary sources including other published reports.

### **Part 3/ Overview of Findings**

The Commission on African American Affairs found no evidence that state programs to promote diversity in contracting result in unfair advantages for minority- and white-women-owned businesses. Overall, from 1992 to 1994, more than 91 percent of state government's procurements and contracts were executed with firms other than those minority-owned and white-women-owned firms certified by the state. This finding is based on a review of data on state agency participation that excludes the Department of Transportation, the Department of Printing, the University of Washington and Washington State University. These institutions are not included because data provided by them fails to meet formatting and content requirements that are required by WAC 326.46.050 and were met by other agencies reporting to OMWBE.

The flexible participation goals set by the state for these firms have never been met across all of state government's four contracting categories; construction, architecture and engineering, consultants, and goods and services. Participation targets established by the state for minority-owned and women-owned businesses are not "quotas" because state statutes and administrative rules establish flexible "goals" rather than rigid numerical "set asides." Where Washington State government is concerned, a "goal" represents an aspiration for minority or female participation, not an assurance that such participation will occur. Where minorities are concerned, only the 10 percent goal for participation in the architectural and engineering category has ever been met (in 1994), but this category represents less than five percent of affected contracting dollars. Where white women are concerned, only the 6 percent goal for participation in the construction category has ever been met (in 1994), and this category represents roughly 27 percent of relevant contracting dollars.

Participation by white women lagged that for minorities in 1992 and 1993. In 1994, however, white-women-owned firms garnered 4.37 percent (\$34.5 million) of the \$763.7 million participation base while minority-owned firms garnered only 4.18 percent (\$32 million) of that amount.

State government is improving contracting participation by white-women-owned firms and minority-owned firms – in that order, however, the improvements are incremental and inconsistent across categories of contracting. The Commission on African American Affairs urges state agencies to continue to foster opportunity by using participation goals for women and minorities as both benchmarks for measuring success and targets to promote change.

### **Recap of Findings from Part 1**

**Affirmative Action: Who's Really Benefiting/Part 1** presented data provided by the Washington State Department of Personnel. These data showed that:

- Whites are the primary beneficiaries of the state's affirmative action program affecting hiring—this includes large numbers of white men as well as white women;
- While people of color certainly have benefited from state affirmative action efforts, Part 1 showed that benefits to people of color are outstripped by those received by whites;
- In fact, many people of color who are hired into state employment appear to be generally unaffected by affirmative action practices, although they may be helped by broader recruitment outreach.

### **Recap of Findings from Part 2**

**Affirmative Action: Who's Really Benefiting/Part 2** presented data on alternative admissions for students seeking baccalaureate degrees and data on classified, professional and faculty employment. Data on alternative admissions were provided by the four-year schools and compiled by the Office of Financial Management. Data on hiring were provided by the four-year schools and compiled by the Commission on African American Affairs. These data showed that:

- Whites are key beneficiaries of "alternative admissions" standards at four-year schools—this includes significant numbers of white men as well as white women. Although whites are the most numerous beneficiaries of alternative admissions, students of color also benefit greatly since, as groups, they all have higher rates of alternative admissions than whites.
- Considered in aggregate, the limited data on supplemental certification show that whites are key beneficiaries of the four-year schools' affirmative action efforts affecting hiring in classified job groups.
- Data compiled for 1994 also show that, despite affirmative action efforts, whites are being hired into most job groups at higher rates than African Americans. In the faculty job group, the data indicate that African Americans were hired at higher rates than whites. However, in three of the five instances where this occurred, only one African American hire comprised the entire pool of hires used to calculate the hire rate.

## **State Affirmative Action on Contracting and The Office of Minority and Women's Business Enterprises**

### **General Overview**

In 1983 the Washington State Legislature found that minority and women-owned businesses were significantly under-represented and were being denied equitable competitive opportunities in contracting. Chapter 39.19 RCW was instituted to mitigate societal discrimination and other factors affecting participation in public works and purchasing. This chapter, and amendments to others (RCW 43.19, 47.28, 39.04, and 39.29), delineated state policy promoting an increased level of participation by minority- (MBEs) and women-owned (WBEs) businesses in state contracting activities.

Under OMWBE policy, agencies with 100 or more employees are required to develop detailed plans and procedures to: communicate the MBE and WBE policy and appropriate procedures to all staff; train staff involved in implementation; annually forecast contracting, procurement, other activity; set MBE/WBE participation goals by class of contract or by individual contract; monitor contracts to ensure MBE/WBE compliance of contractors and vendors; and review and revise contracting and procurement documents, policies, and practices which may create barriers to successful implementation of the plan.

Minority business enterprises are those owned and controlled by persons of one of the four designated minority groups; African-American, Asian-Pacific American, Hispanic-American, and Native American. Women's business enterprises are those owned and controlled by one or more nonminority women. Where both white-women-owned and minority-owned business are concerned, certification requires that 51 percent or greater ownership interest be held by an affected minority group member or white woman. Firms owned by minority women are considered part of the minority business group, not the women's group.

### **Executive Order 93-07**

The Governor's Executive Order 93-07 reaffirmed the state's commitment to developing aggressive workplans and efficient reporting systems to maximize the opportunities for MBEs and WBEs. These plans and reporting systems are intended to directly and meaningfully increase MBE and WBE participation in public works contracts, and contracts for goods and services procured by state agencies or educational institutions. Agencies are required to apply procedures approved by OMWBE.

### **The Office of Minority and Women's Business Enterprises**

OMWBE establishes overall annual goals for participation in state contracts by qualified MWBEs for all state agencies and educational institutions. These goals do not replace the specific goals developed by state agencies and educational institutions. The director of the Office of Minority and Women Business Enterprise reviews the overall annual goals each year and establishes goals for future years.

OMWBE has a statutory mandate to monitor, evaluate, and report on the progress the state makes in implementing the statute. This report goes to the Governor and the Legislature. An additional report that identifies those agencies out of compliance with the statute to the Legislative Budget Committee and the State Auditor as well as the Governor and the Legislature.

Under Executive Order 93-07, OMWBE shall provide state agencies and educational institutions with guidelines and assistance in establishing and implementing economic opportunities for MBEs and WBEs relative to public works and the provision of goods and services to the state.

#### *General Duties of OMWBE*

One important function of OMWBE is the collection and dissemination of data on participation of MBEs and WBEs in state contracting. The primary functions involved are: 1) certifying minority-owned (MBEs) and women-owned businesses (WBEs), publishing a directory of information about such firms, and setting goals for MBE and WBE participation, 2) collecting data from agencies describing the levels of MBE and WBE participation in relevant contracting activities — this includes establishing a participation base to define which contracting activities are affected by OMWBE rules and reporting progress toward goal attainment.

— 1) Certification requires that OMWBE review various documents provided by contractors to ensure that certified firms are actually owned and controlled by qualifying minorities and women. OMWBE also makes reviews the qualifications of applicants to provide services in the lines of business performed by the enterprise seeking certification.

—2) Starting with Fiscal Year 1992, OMWBE obtains data on all expenditures for public works, goods, and services through the state's financial reporting system or directly from those organizations that operate independent financial tracking systems. However, the number of agencies and educational institutions for which the data is comparable during the period covered by this study varied from year to year; 117 in FY92, 121 in FY93, and 120 in FY94. OMWBE reports that this is due primarily to start-up problems for some and the subsequent merger/dissolution of others. Further, the following four entities submitted their own reports which were not comparable for the years indicated: the University of Washington, Washington State University, the Department of Printing (1992-1994), and the Washington State Department of Printing (1992, 1993). Accordingly, the charts and graphs in this report separate these agencies from the rest of those reporting.

The "participation base," the total dollars expended on public works and goods and services, is a relatively small percentage of the state's annual budget. For example, in FY94, OFM reported the state's total disbursements were \$18.3 billion. However, the total that was subject to Chapter 39.19 RCW was only \$763.7 million (Note: another \$1 billion is reflected in the incomparable data supplied from UW, WSU, WSDOT and the Department of Printing.)

Here are the major adjustments taken to the \$18.3 billion in total disbursements to arrive at the \$763.7 million participation base:

- \$4.116 billion in statutory exemptions – this amount includes items such as salaries to employees, benefits, interagency transfers, debt service and other such items where no opportunity exists for WBE or MBE participation.
- \$11.762 billion in grants, benefits to clients, and client services since these expenditures are excluded by administrative rule and offer limited opportunities for WBE or MBE participation.
- \$76 million for Costs of Goods Sold, including net purchases of liquor for resale and manufacturing overhead costs. All items in this category are excluded except expenditures for raw materials and freight, where there may be opportunities for WBE or MBE participation.
- \$77 million for all travel disbursements since most of that money goes to employees as reimbursements and most of the remaining share goes to air travel. Other arrangements are made to promote the use of certified travel agents, so no travel dollars are included in the participation base.
- Roughly one-quarter of total disbursement for personal services contracts, goods and services, and capital outlays since about that share of these activities offers no opportunities for MBE or WBE participation.
- Further deductions are taken for expenditures to sheltered workshops, non-profits, and other public entities. Deductions also are taken for mandatory use contracts awarded by the Department of General Administration.

#### *State Agency Accomplishments*

OMWBE has contributed to the development of contracting/procurement opportunities for firms owned and operated by people of color and women. State agency dollar expenditures and contract participation with these firms increased from 1992 to 1994. State government's contracting goal of 6 percent participation for women-owned businesses was met in Fiscal Year 1994, but the 10 percent participation goal for minority-owned firms was not met for that year. Definitive interpretations of these outcomes are difficult to make because of changes which have occurred in agency reporting practices and related administrative procedures. For example, two new agencies were included in the totals in 1994 that were not reported in 1992. This means that participation data for any one year of program activity is not comparable to that for any other year, so it is difficult to evaluate progress.



*Small Percentages of Certified Firms are Participating in State Contracting*

Although OMWBE has supported a number of activities to promote greater participation, relatively small percentages of women- (WBE) and minority-owned firms (MBE) certified by the Office of Minority and Women's Business Enterprises (OMWBE) actually are participating in state contracting activities. This is true for African Americans and other groups.

These findings, and those on the following pages, are based on a review of data on state agency participation that excludes the Department of Transportation, the Department of Printing, the University of Washington and Washington State University. These institutions are not included because data provided by them fails to meet formatting and content requirements that are required by WAC 326.46.050 and were met by other agencies reporting to OMWBE.

The bar charts on the following pages compare statewide participation goals and actual participation. The bar charts show relatively low minority participation for most contract categories, particularly in the largest categories of expenditure. For example, minority participation percentages are strong for architecture and engineering for all three years, yet this category represents only about 3 percent of the total participation base each year. Meanwhile, minority participation is significantly lower in the two categories that represent 90 percent of participation base expenditures — construction and goods and services.

A review of African American participation by class of contract shows an even more limited degree of participation. For example, a construction participation base of \$212.2 million in 1993 included African American participation of 0.04 percent in primary contract awards and only 1.4 percent participation by African American subcontractors. The \$212.2 million construction participation base represents 23.9 percent of the total OMWBE participation base.

The table on the next page shows African American primary contractor participation (direct) and subcontractor participation (indirect) by class of contract for 1992, 1993 and 1994. The categorical participation base is shown for each contract category. In addition, the share that each category represents of the total participation base also is shown for each year. From this display it's clear that African American participation represents a truly minute share of a limited participation base as defined by OMWBE, particularly in 1992 and 1993.

Certified African-American-owned firms represent no more than 2.0 percent of participation in any single category of contracting from 1992-1994. In nearly every instance, African Americans represented less than 1 percent of participation for 1992 and 1993. Data for 1994 show improvement, but participation among African Americans is still low.

## **African American Direct and Indirect Shares of Activity Counted in the OMWBE Contracting Participation Base**

Data do not include the Department of Transportation, the Department of Printing, the University of Washington, or Washington State University

### **Construction**

**1994** Participation base of \$203.9 million (26.7 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.31%</b>	<b>Indirect 2.0%</b>
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**1993** Participation base of \$212.2 million (23.9 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.04%</b>	<b>Indirect 1.4%</b>
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**1992** Participation base of \$266.3 million (30 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.06%</b>	<b>Indirect 0.2%</b>
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### **Goods and Services**

**1994** Participation base of \$481.9 million (63.1 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.6%</b>	<b>Indirect 0.2%</b>
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**1993** Participation base of \$604.1 million (68.1 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.26%</b>	<b>Indirect 0.16%</b>
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**1992** Participation base of \$543.5 million (62 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.37%</b>	<b>Indirect 0.16%</b>
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### **Architecture and Engineering**

**1994** Participation base of \$28.8 million (3.8 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.28%</b>	<b>Indirect 0.9%</b>
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**1993** Participation base of \$21.4 million (2.4 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.11%</b>	<b>Indirect 1.1%</b>
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**1992** Participation base of \$25.3 million (3.0 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.07%</b>	<b>Indirect 0.3%</b>
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### **Consulting**

**1994** Participation base of \$49.1 million (6.4 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.04%</b>	<b>Indirect 0.24%</b>
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**1993** Participation base of \$49.7 million (5.6 percent of total base)

<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.18%</b>	<b>Indirect 0.28%</b>
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**1992** Participation base of \$47.3 million (5.4 percent of total base)

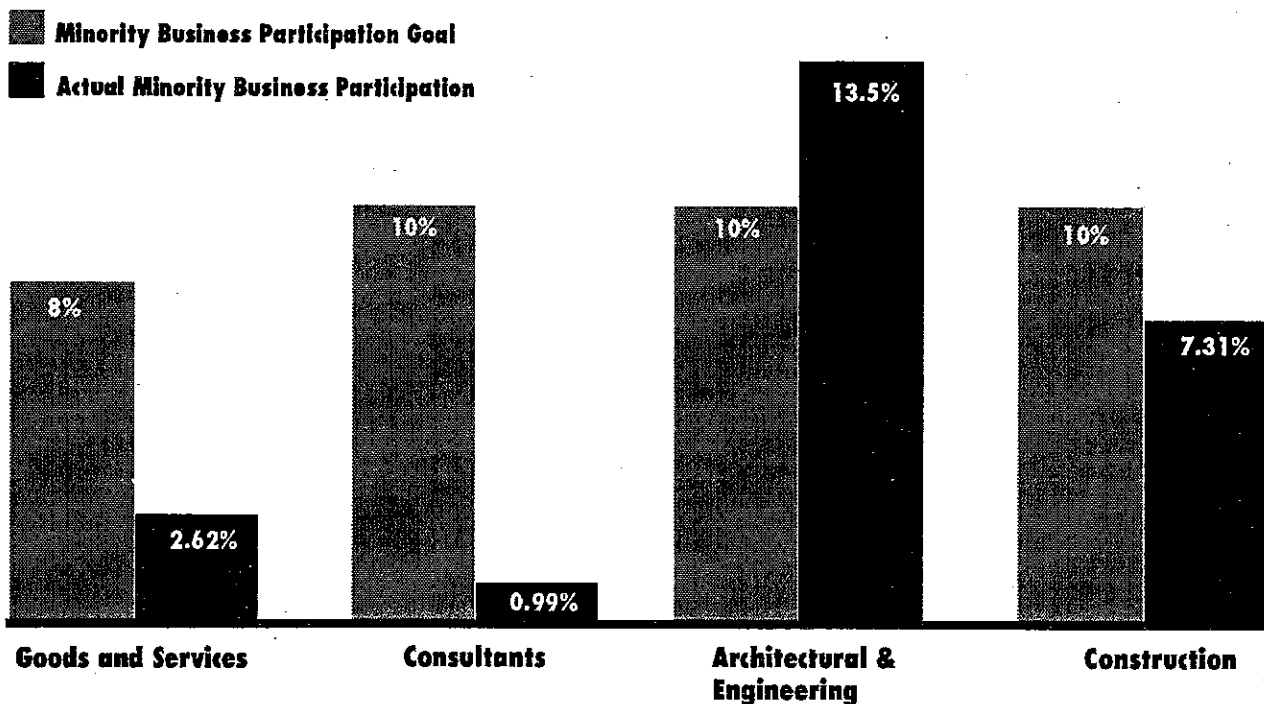
<b>African American Contractors' Share</b>	<b>Direct</b>	<b>0.1%</b>	<b>Indirect 0.3%</b>
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Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category.

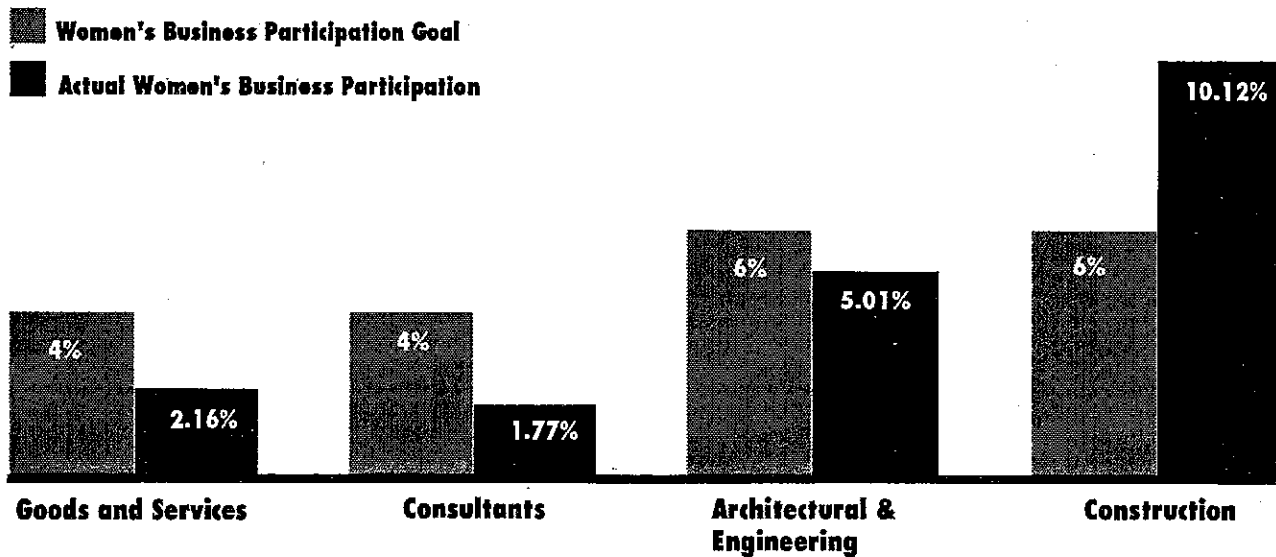
## 1994 Participation Goals for Minorities and Women vs Actual Participation

Source: Office of Minority and Women's Business Enterprises

### Minority Participation



### Women's Participation

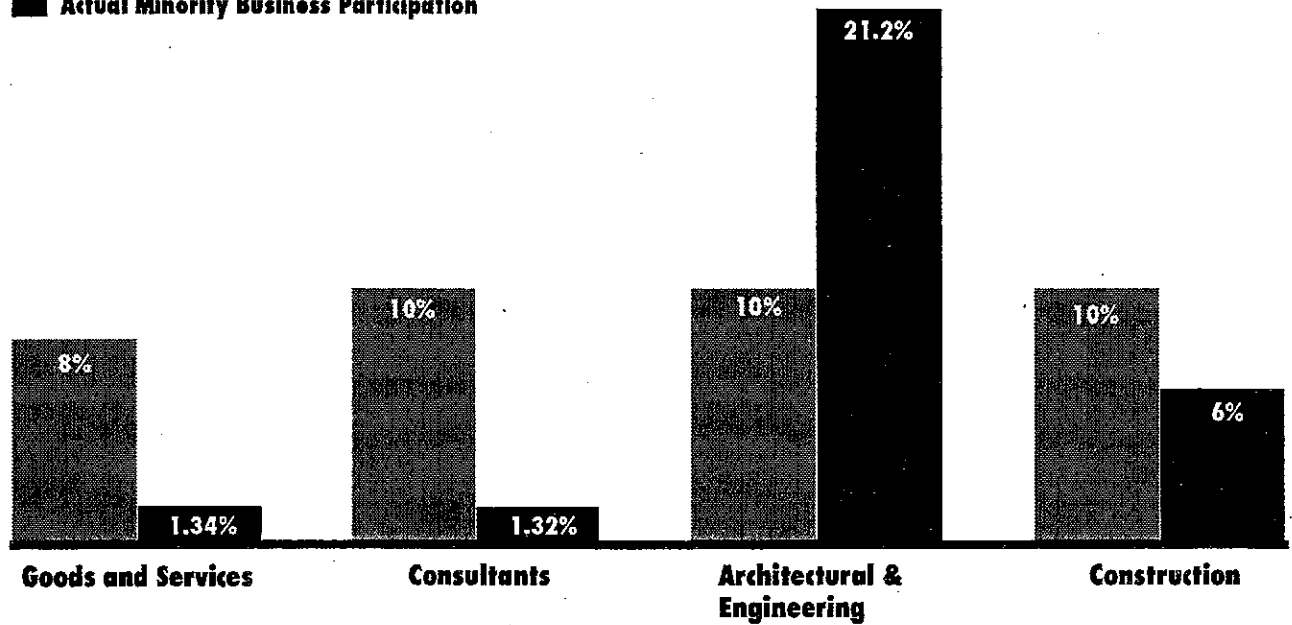


# 1993 Participation Goals for Minorities and Women vs Actual Participation

Source: Office of Minority and Women's Business Enterprises

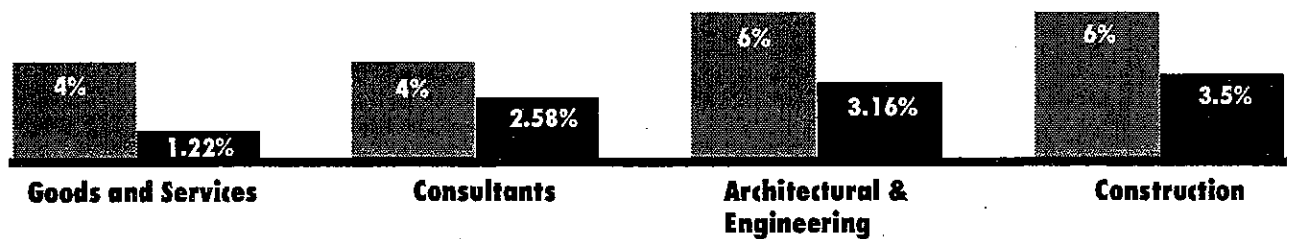
## Minority Participation

■ Minority Business Participation Goal  
■ Actual Minority Business Participation



## Women's Participation

■ Women's Business Participation Goal  
■ Actual Women's Business Participation

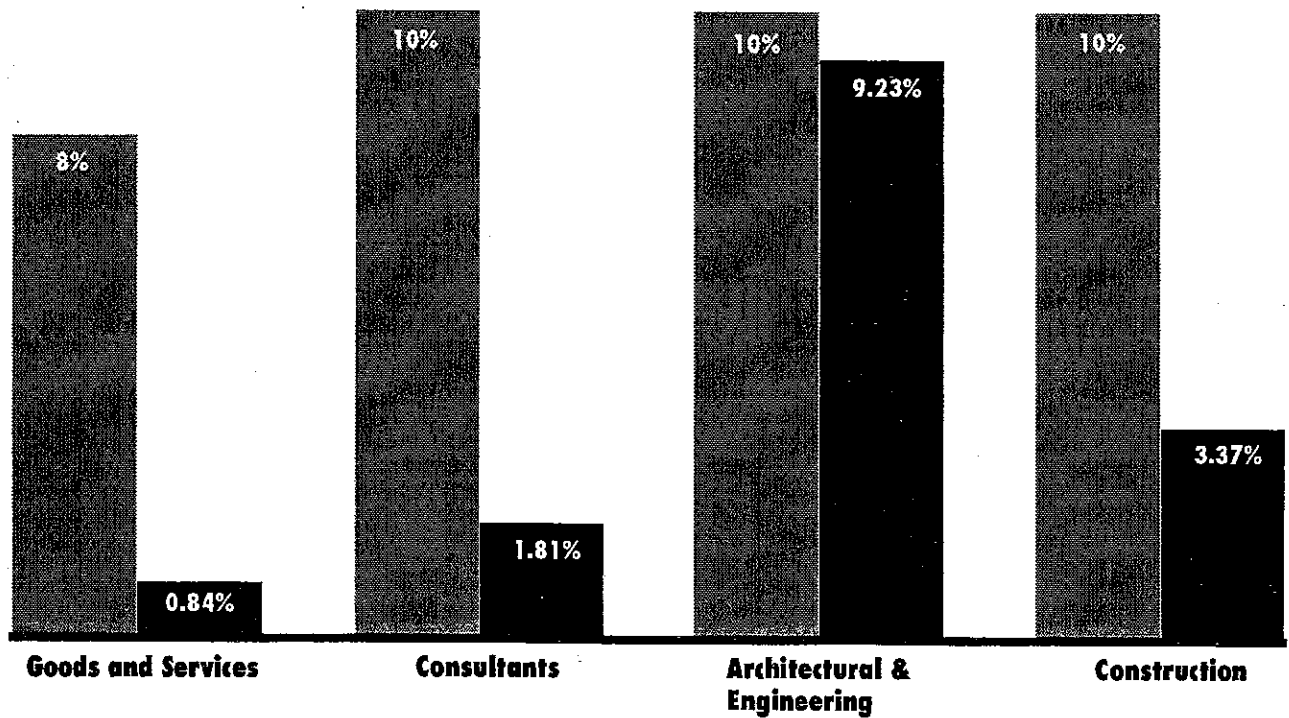


## 1992 Participation Goals for Minorities and Women vs Actual Participation

Source: Office of Minority and Women's Business Enterprises

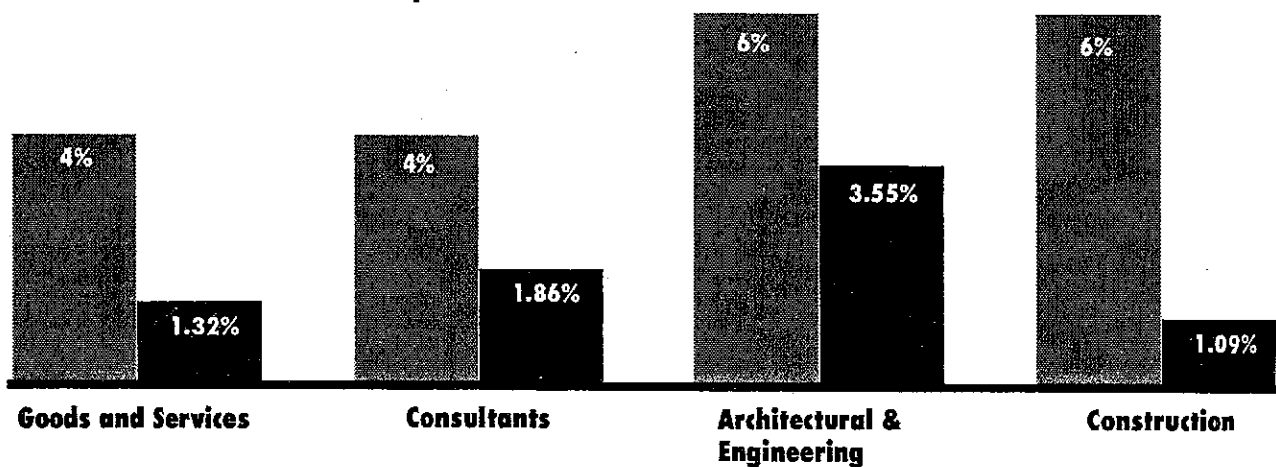
### Minority Participation

■ Minority Business Participation Goal  
■ Actual Minority Business Participation



### Women's Participation

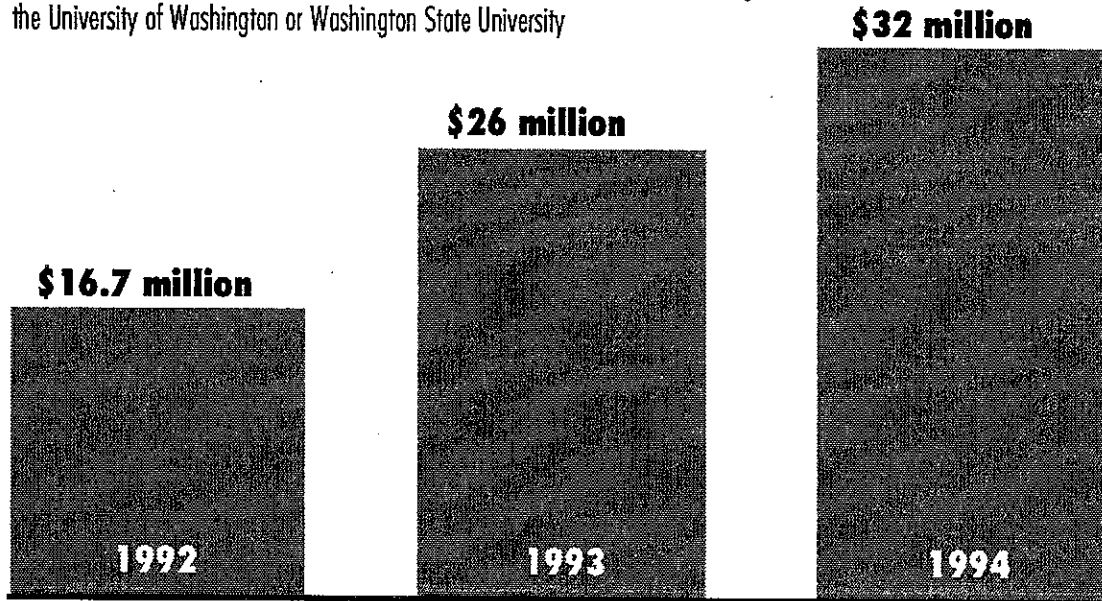
■ Women's Business Participation Goal  
■ Actual Women's Business Participation



### **Minority Participation in State Contracting / 1992 to 1994**

Source: Office of Minority and Women's Business Enterprises

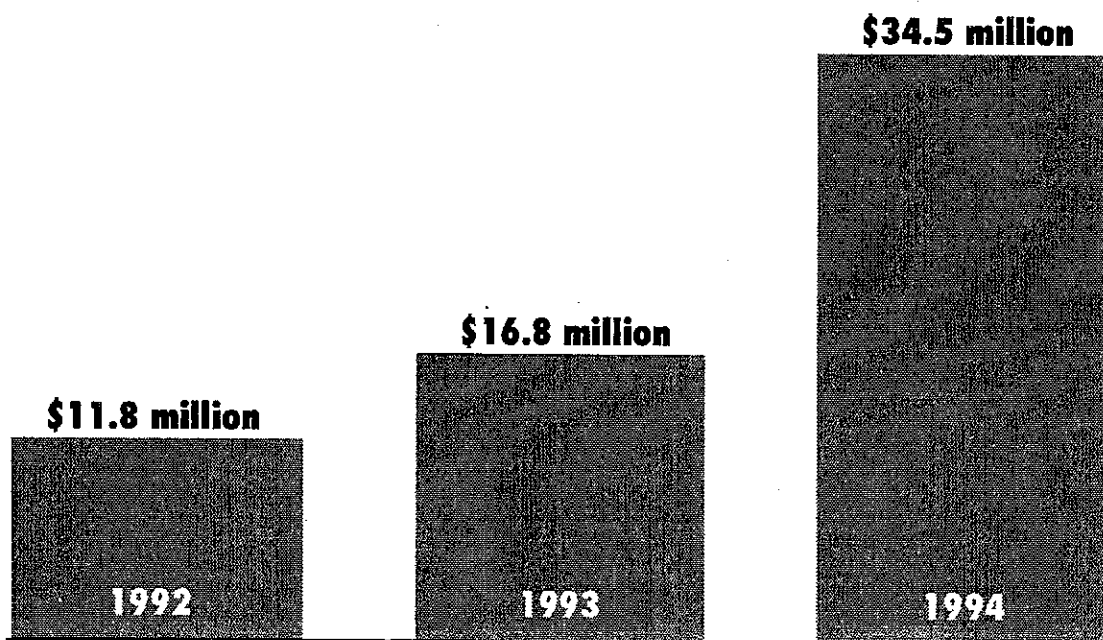
Data do not include the Department of Transportation, the Department of Printing,  
the University of Washington or Washington State University



### **White Female Participation in State Contracting / 1992 to 1994**

Source: Office of Minority and Women's Business Enterprises

Data do not include the Department of Transportation, the Department of Printing,  
the University of Washington or Washington State University

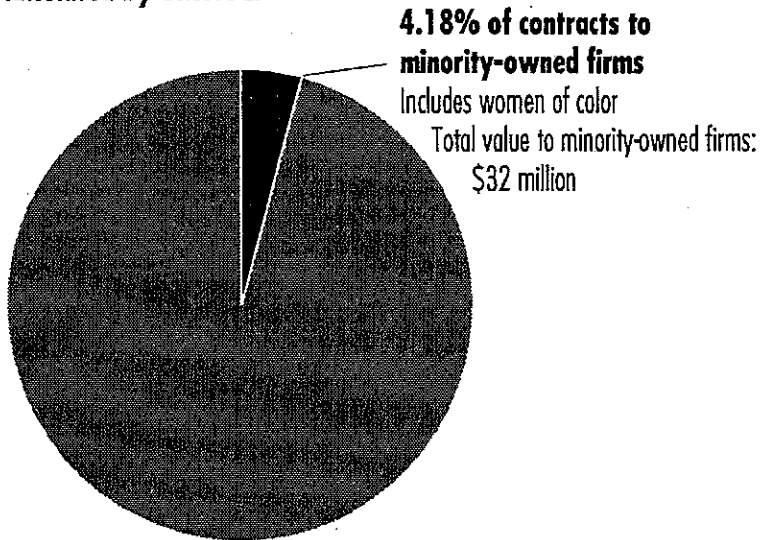


## 1994 Minority Participation in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total contracts of \$763.7 Million.**

**Represents adjusted participation base  
calculated by OMWBE.**



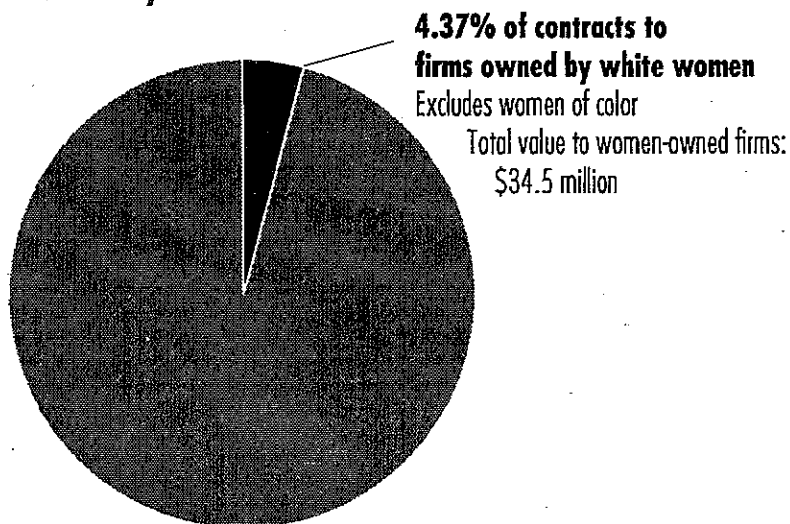
Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category. Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

## 1994 White Female Participation in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total contracts of \$763.7 Million.**

**Represents adjusted participation base  
calculated by OMWBE.**

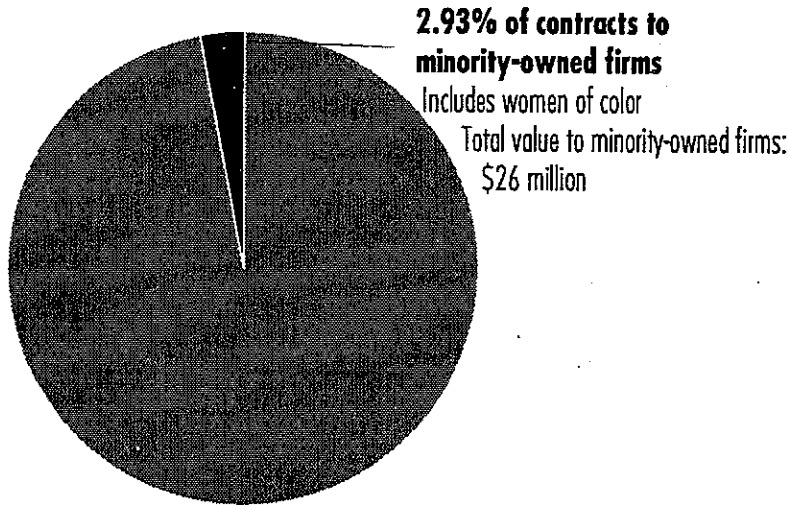


## 1993 Minority Participation in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total contracts of \$887.4 Million.**

**Represents adjusted participation base  
calculated by OMWBE.**



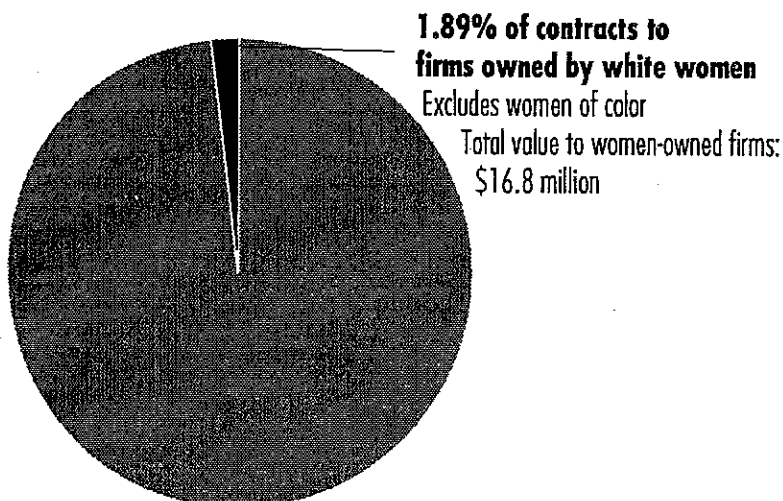
Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category. Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

## 1993 White Female Participation in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total contracts of \$887.4 Million.**

**Represents adjusted participation base  
calculated by OMWBE.**



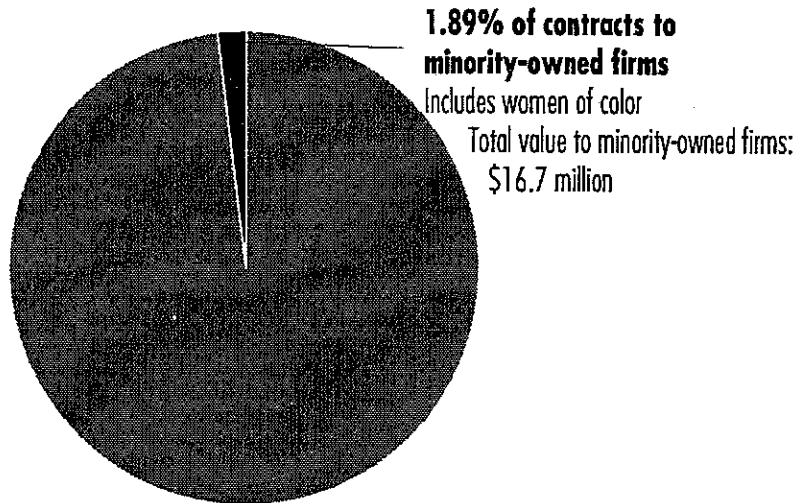


## 1992 Minority Participation in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total contracts of \$882.3 Million.**

**Represents adjusted participation base  
calculated by OMWBE.**



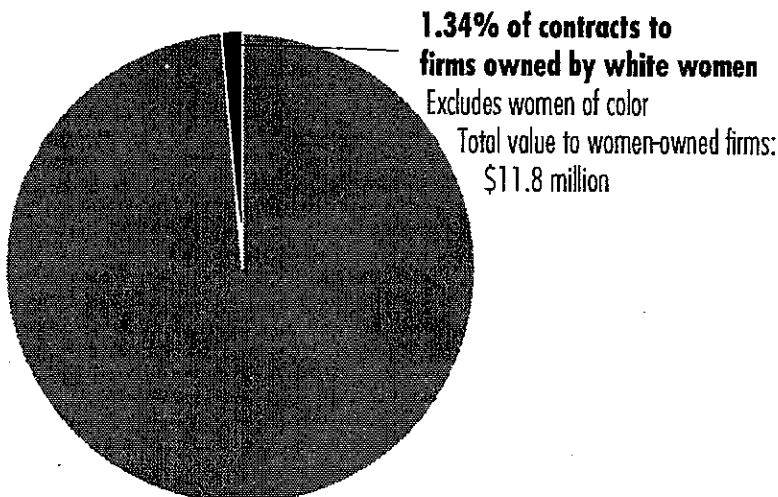
Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category. Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

## 1992 White Female Participation in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total contracts of \$882.3 Million.**

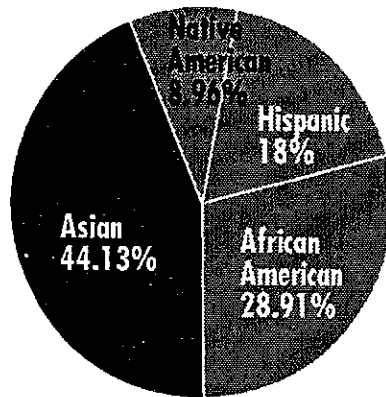
**Represents adjusted participation base  
calculated by OMWBE.**



### 1994 Minority Participation by Race in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total value of contracts to minority-owned firms – Direct and Indirect: \$32 million**

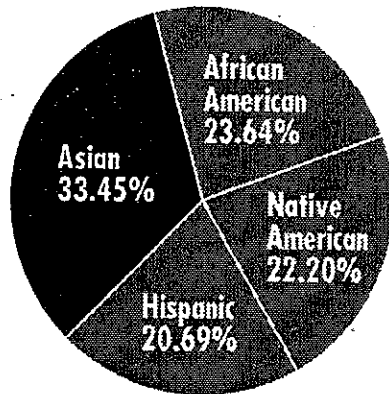


Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

### 1993 Minority Participation by Race in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total value of contracts to minority-owned firms – Direct and Indirect: \$26 million**

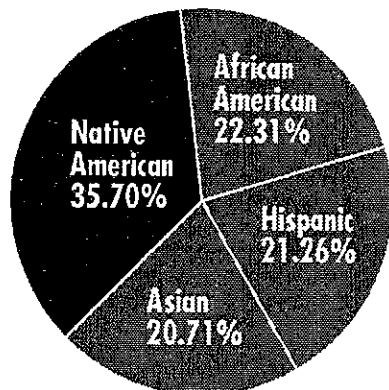


Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

### 1992 Minority Participation by Race in State Contracting

Source: Office of Minority and Women's Business Enterprises

**Total value of contracts to minority-owned firms – Direct and Indirect: \$16.7 million**



Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

## Additional Participation Data

Source: Office of Minority and Women's Business Enterprises

The data for the following agencies is not included in the statewide participation base totals.

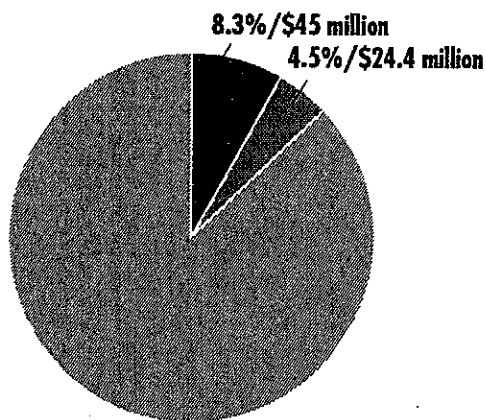
The information reported by these agencies does not conform to the formatting requirements and content requirements stipulated in WAC 326.46.050.

■ Minority Participation ■ Womens' Participation

### Department of Transportation

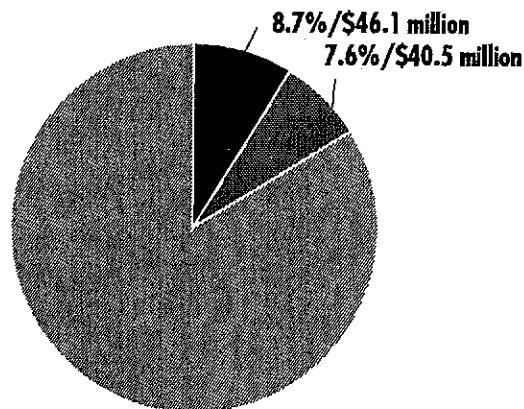
**1992**

Participation Base  
\$546 Million



**1993**

Participation Base  
\$533 Million



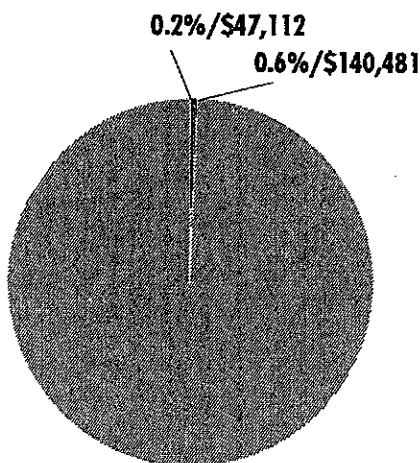
**1994**

Data was not provided  
for this time period

### Department of Printing

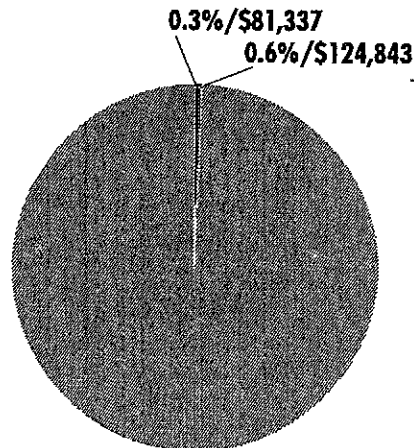
**1992**

Participation Base  
\$23.6 Million



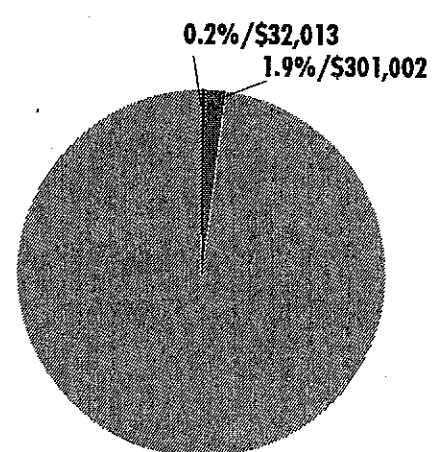
**1993**

Participation Base  
\$22.6 Million



**1994**

Participation Base  
\$15.8 Million



## Additional Participation Data

Source: Office of Minority and Women's Business Enterprises

The data for the following agencies is not included in the statewide participation base totals.\*

The information reported by these agencies does not conform to the formatting requirements and content requirements stipulated in WAC 326.46.050.



Minority Participation

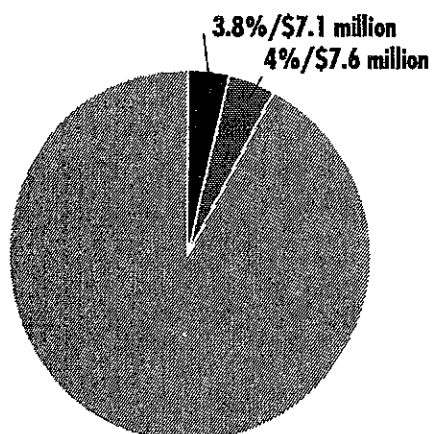


Womens' Participation

### University of Washington

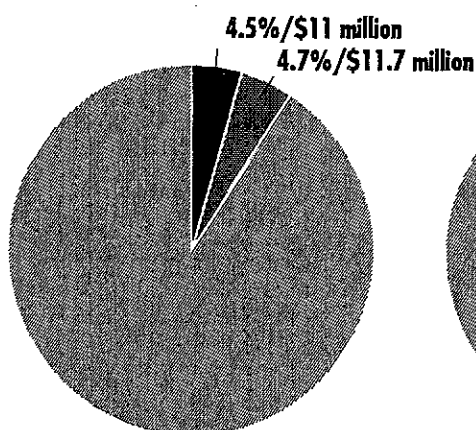
**1992**

Participation Base  
\$188 Million



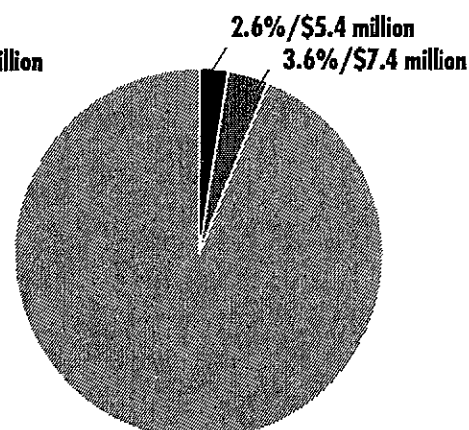
**1993**

Participation Base  
\$247 Million



**1994**

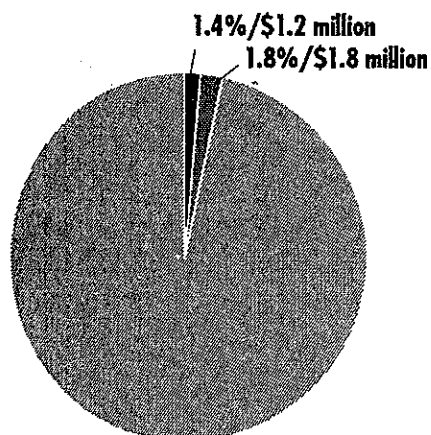
Participation Base  
\$208 Million



### Washington State University

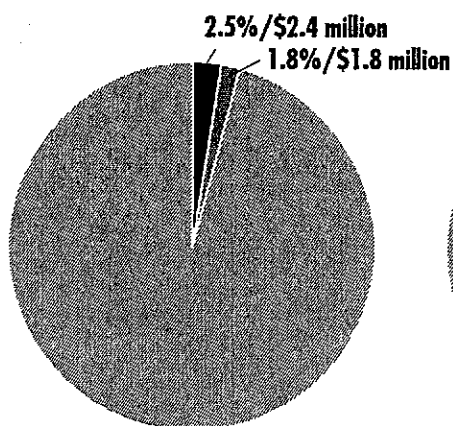
**1992**

Participation Base  
\$86.4 Million



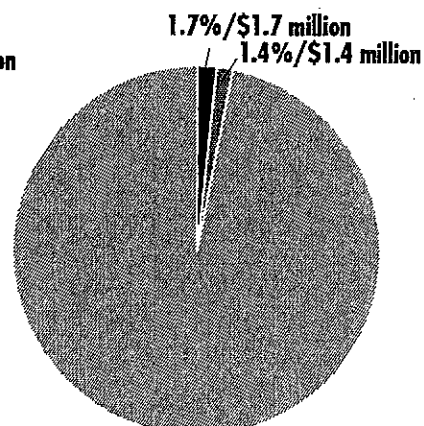
**1993**

Participation Base  
\$98.1 Million



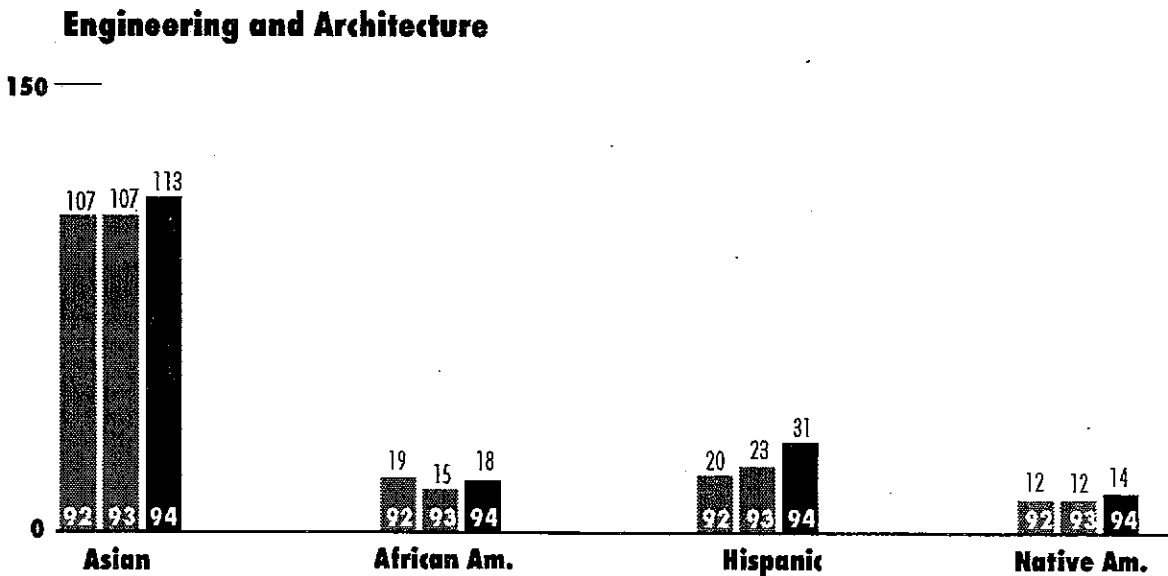
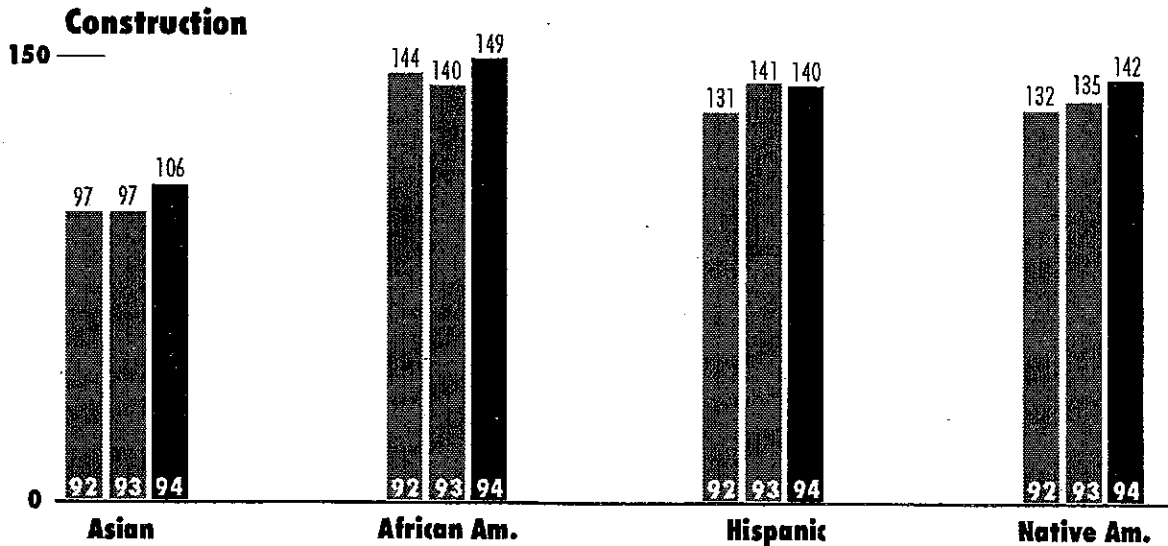
**1994**

Participation Base  
\$100.6 Million



## Certified Minority Firms/ Fiscal Year 1992 through 1994

Source: Office of Minority and Women's Business Enterprises

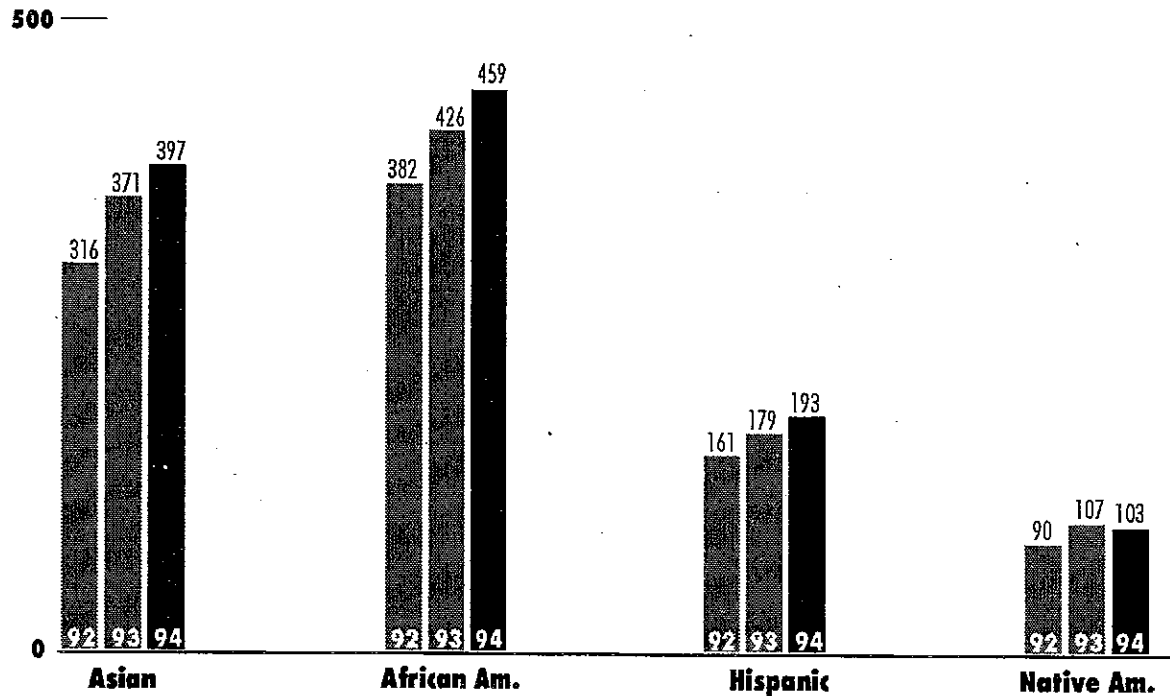


These figures represent all firms that held certified status at any point during a fiscal year, and all firms that had an opportunity to do business as certified firms during that fiscal year. Grand totals incorporating all categories exceed the actual number of certified firms since some firms are certified to operate in more than one contracting category.

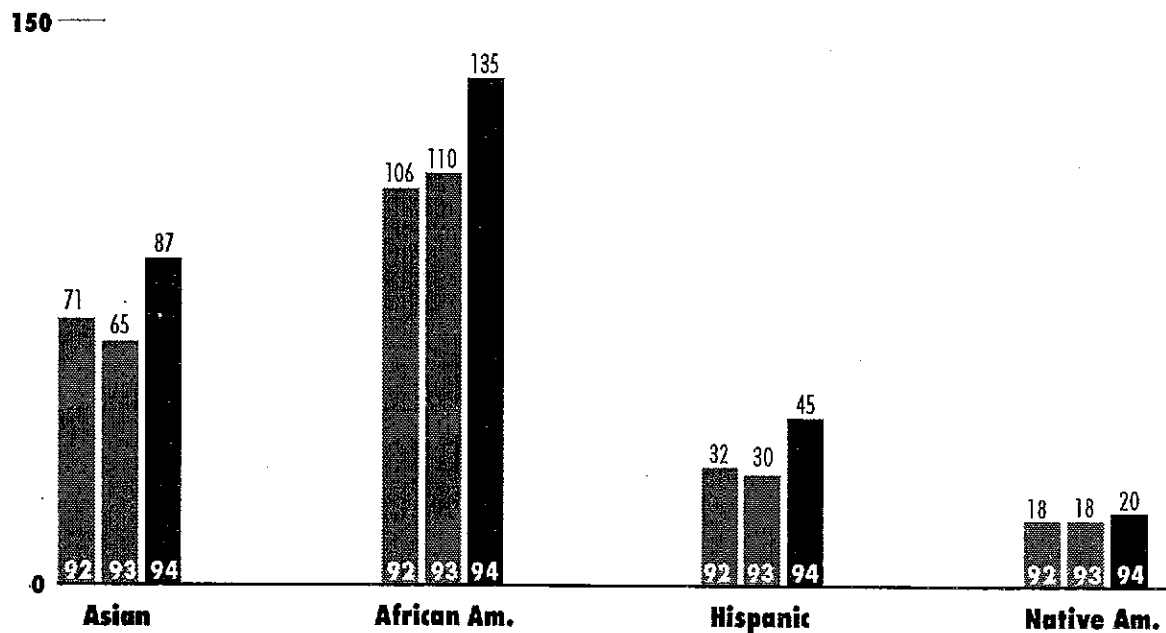
## Certified Minority Firms/ Fiscal Year 1992 through 1994

Source: Office of Minority and Women's Business Enterprises

### Goods and Services



### Consultants

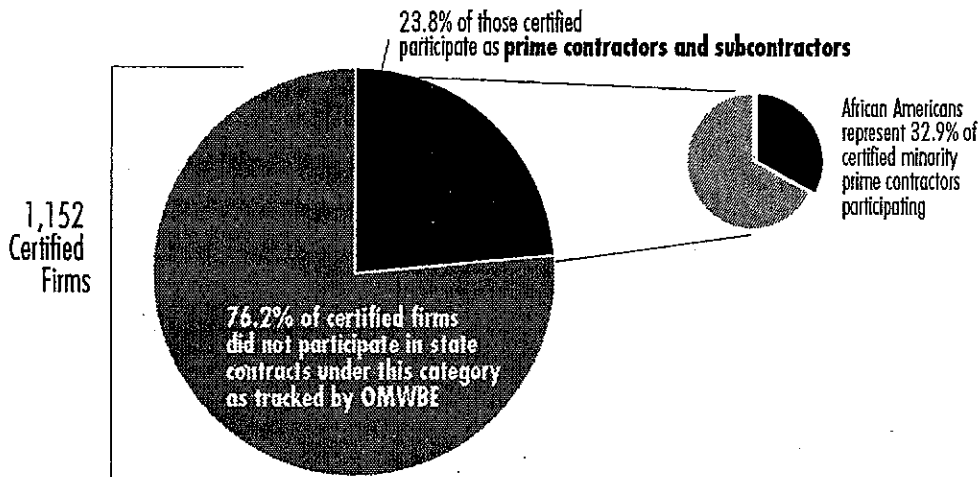


These figures represent all firms that held certified status at any point during a fiscal year, and all firms that had an opportunity to do business as certified firms during that fiscal year. Grand totals incorporating all categories exceed the actual number of certified firms since some firms are certified to operate in more than one contracting category.

# Share of Certified Minority Firms Participating in State Contracts

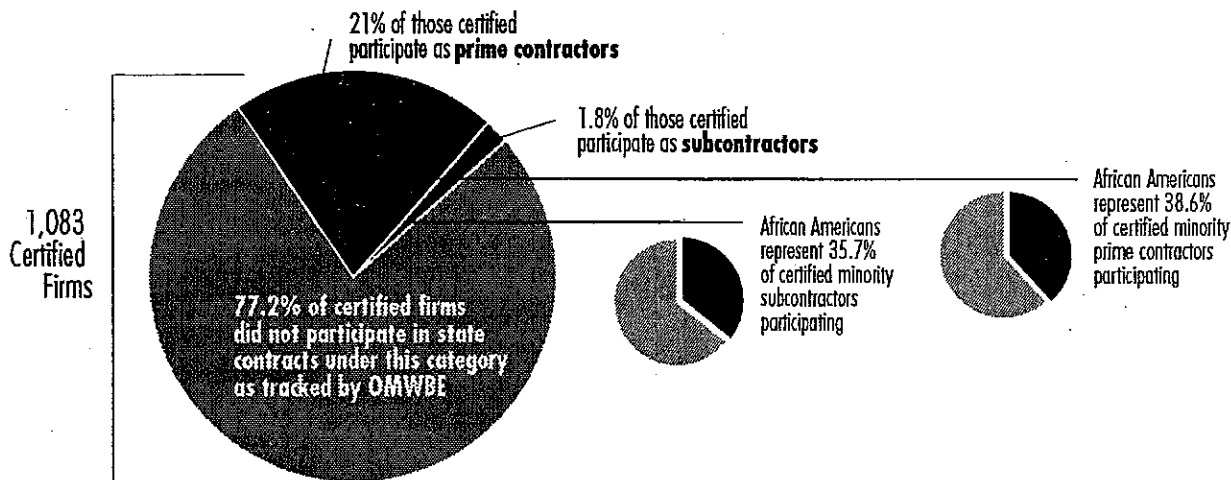
Source: Office of Minority and Women's Business Enterprises

## 1994 Goods and Services/ Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans

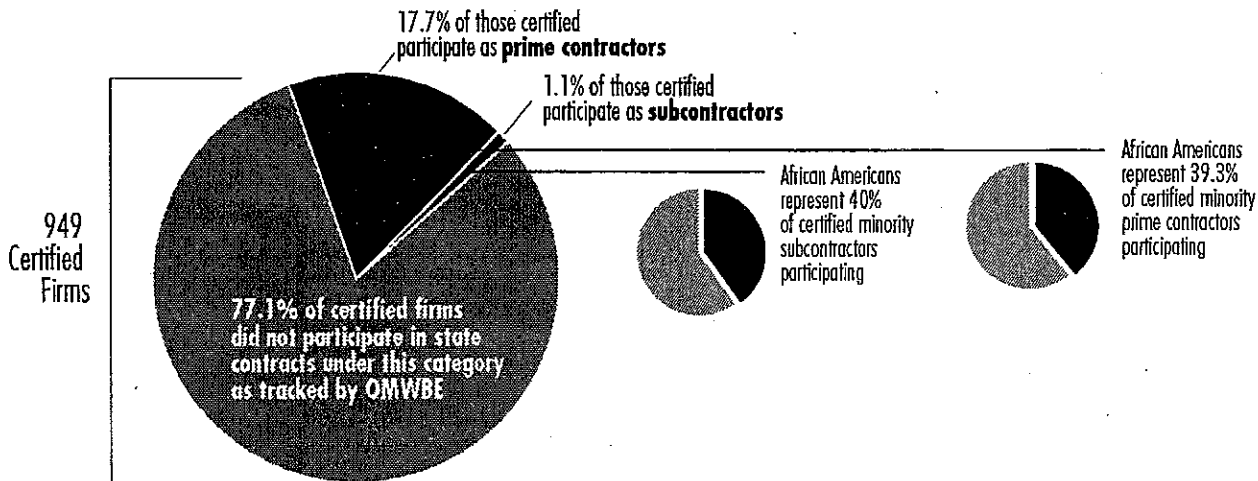


Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category. Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

## 1993 Goods and Services/ Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans



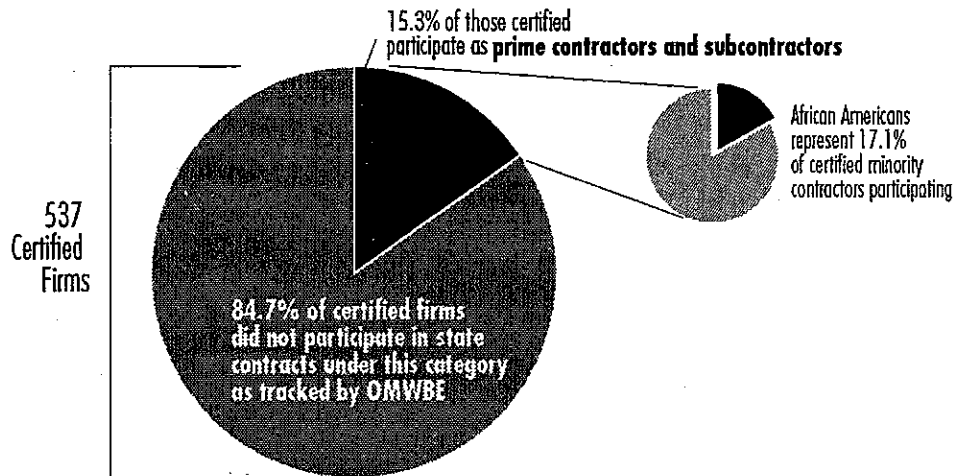
## 1992 Goods and Services/ Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans



# Share of Certified Minority Firms Participating in State Contracts

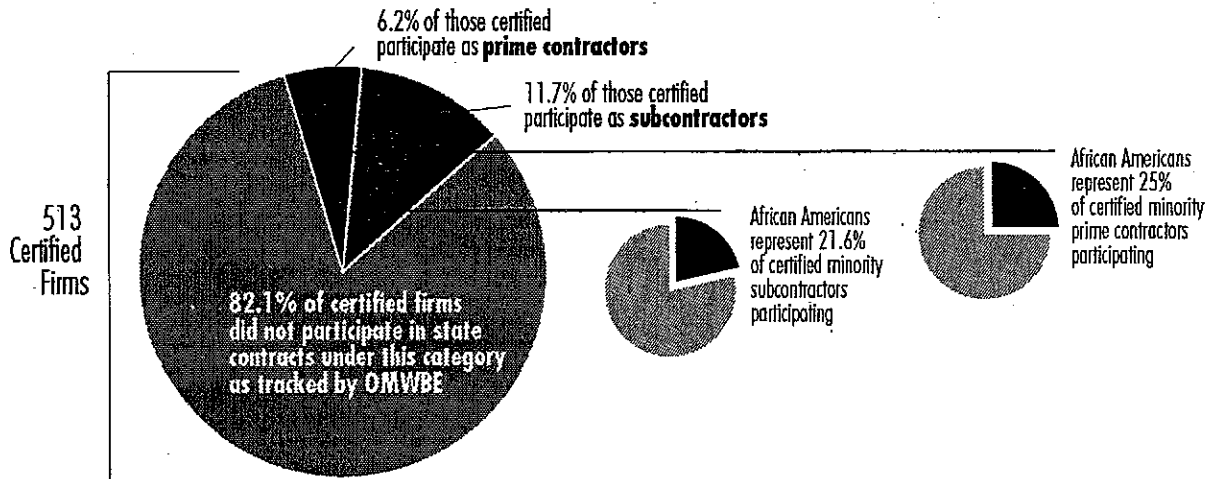
Source: Office of Minority and Women's Business Enterprises

**1994 Construction/** Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans

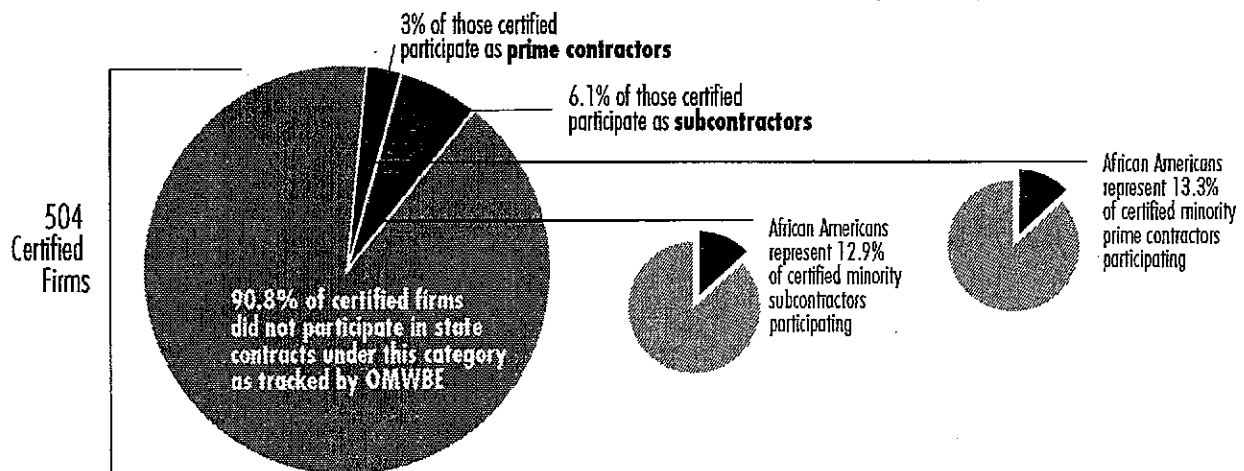


Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category. Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

**1993 Construction/** Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans



**1992 Construction/** Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans

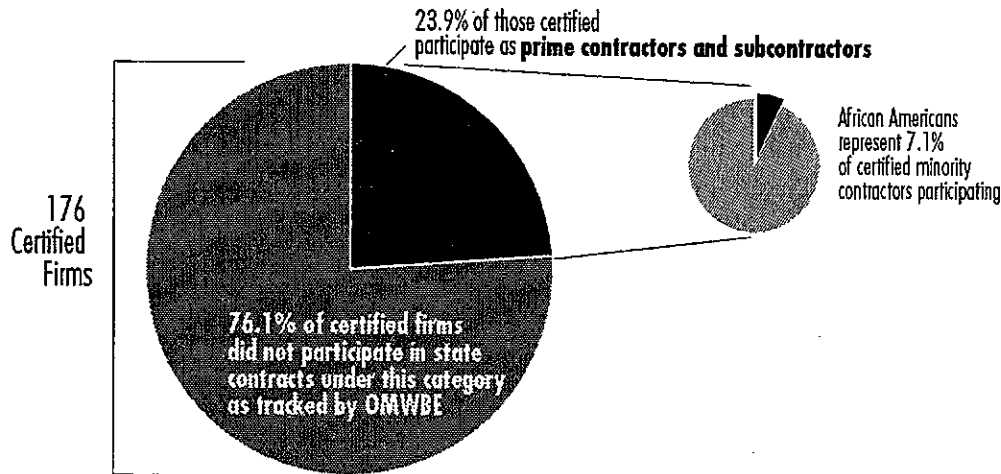




# Share of Certified Minority Firms Participating in State Contracts

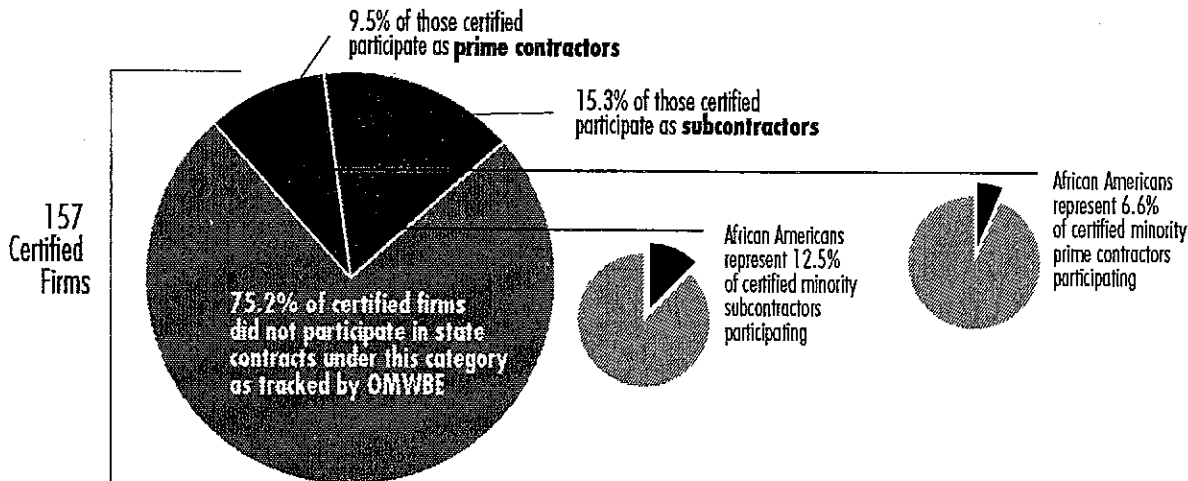
Source: Office of Minority and Women's Business Enterprises

## 1994 Engineering and Architecture/ Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans

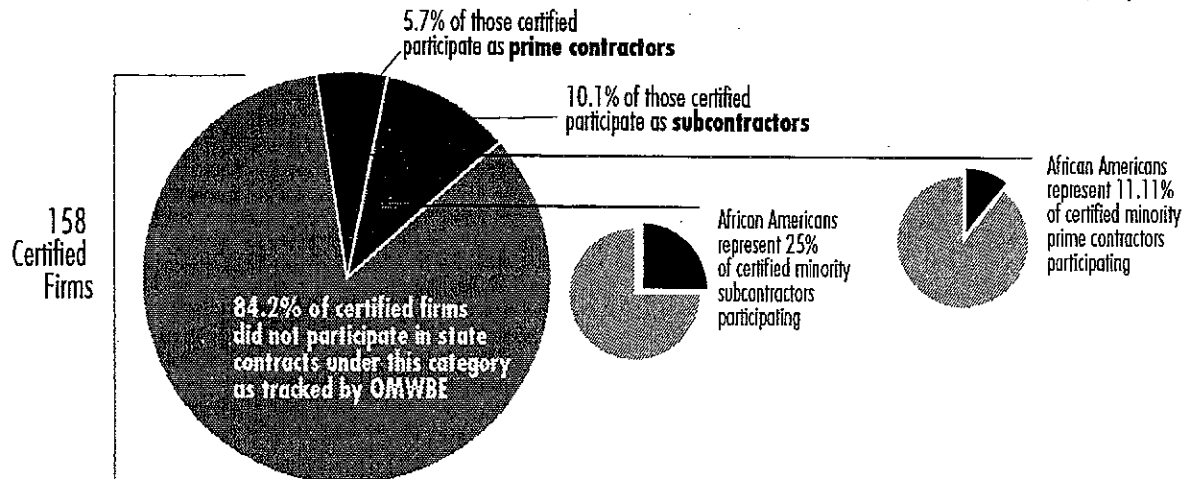


Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category. Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

## 1993 Engineering and Architecture/ Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans



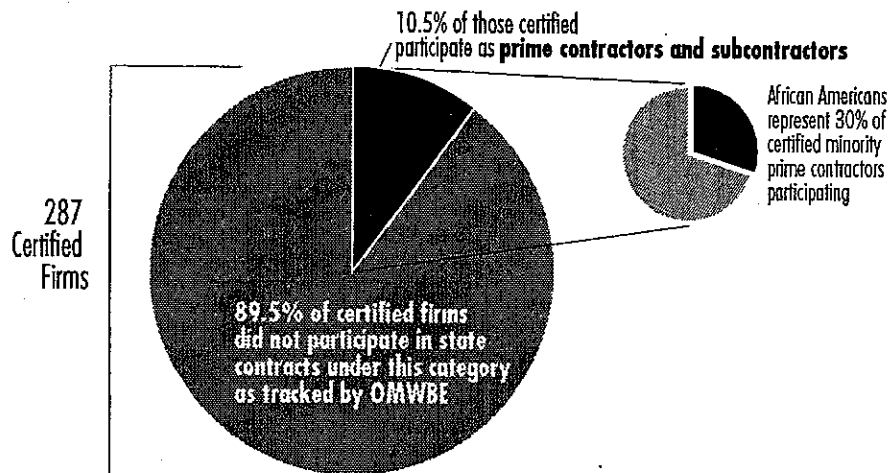
## 1992 Engineering and Architecture/ Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans



# Share of Certified Minority Firms Participating in State Contracts

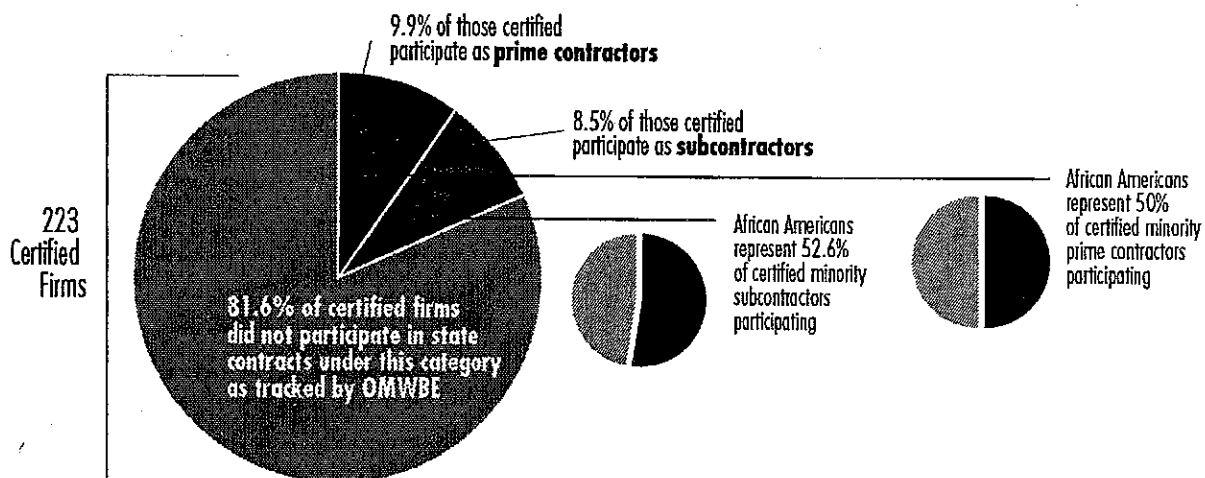
Source: Office of Minority and Women's Business Enterprises

**1994 Consulting/** Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans

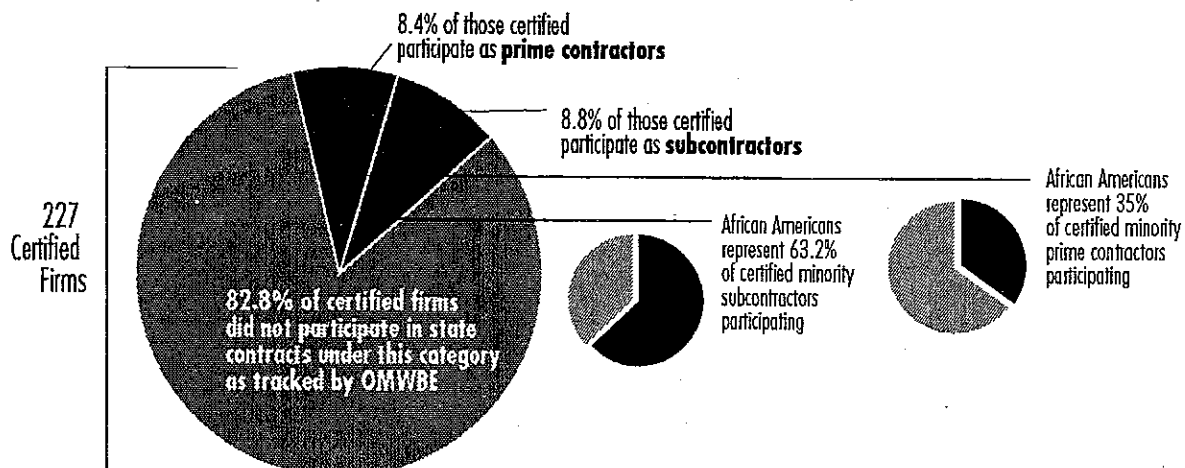


Figures expressing direct (prime) and indirect (subcontractor) participation were produced by taxpayer identification number with no duplications, however a firm may appear in more than one contracting category. Data do not include the Department of Transportation, the Department of Printing, the University of Washington or Washington State University

**1993 Consulting/** Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans



**1992 Consulting/** Includes Asian-Pacific Americans, African Americans, Hispanics, Native Americans



## **Findings from a Review of OMWBE Participation Data**

These findings, and those on the next page, are based on a review of data on state agency participation that excludes the Department of Transportation, the Department of Printing, the University of Washington and Washington State University. These institutions are not included because data provided by them fails to meet formatting and content requirements that are required by WAC 326.46.050 and were met by other agencies reporting to OMWBE.

### *General Findings*

- Only a small percentage of certified minority-owned and women-owned firms actually do business with the state. In 1993, more than 4,529 MBE and WBE firm held certified status during the fiscal year, but only 747 worked as prime contractors with the state (16.5 percent) and 247 worked as subcontractors (5.5 percent).
- State government is improving opportunities for participation of minorities and women in state contracting, but the improvements appear to be incremental and inconsistent across contracting categories.
- OMWBE data on contract participation is not entirely comparable for all years of program operation. OMWBE cites changes to its reporting base in all three of the years for which data is available. OMWBE provided data that factored out one of the most significant base changes (the addition of WSDOT in 1994), but the effects of other base changes could limit comparability of data from one year to another. The effects of base changes, if any, could be very small.

### *Findings on Minority Participation*

- In 1994, state government failed to meet statewide participation goals for minorities in three of four contracting categories. The 10 percent participation goal was met for architecture and engineering, which represented less than 3 percent of the total participation base against which statewide goal attainment is measured. Among the various minority-owned firms participating in this category, only three were African-American contractors, and only one of them was a prime contractor.
- In 1994, less than 1 percent of consulting activity included in the OMWBE participation base was performed by minority consultants. Of that tiny share, only .04 percent of contractors were African-American consultants.
- In 1994, minority participation in construction and goods and services contracts showed significant improvement over 1993 data, even after the affects of adding WSDOT were factored out. This indicates increased contracting opportunities for minorities in these contract categories.
- The largest gap between a categorical MBE participation goal and actual MBE participation for 1994 occurs in the consulting category, which represents roughly 6.7 percent of the total participation base. The goal for 1994 was 10 percent while actual participation was less than 1 percent.

- The second largest gap between a categorical MBE participation goal and actual MBE participation for 1994 occurs in the goods and services category, which represents roughly 63.1 percent of the participation base. The goal for 1994 was 8 percent while actual participation was 2.6 percent.

- In 1993, state government failed to meet MBE goals in three of four contracting categories. The 10 percent participation goal was met for architecture and engineering, which represented less than 3 percent of the total participation base. Among all the minority firms participating in this category, only four were African-American contractors, and only one of them was a prime contractor.

#### *Findings on Participation of White-Women-Owned Firms*

- In 1994, state government agencies failed to meet statewide participation goals for women in three of the four contracting categories. The goal for nonminority female participation in construction was 6 percent, while actual participation was 10.12 percent, so the goal for construction was met with a healthy overage of more than 4 percentage points. The construction category represents roughly 26.7 percent of the total participation base.

- Less than 2 percent of state consulting activity was performed by nonminority women consultants in 1994. The goal for nonminority women's participation is 4 percent, but actual participation was 1.77 percent.

- The largest gap between a categorical WBE participation goal and actual WBE participation for 1994 occurs in the consulting category, which represents roughly 6.7 percent of the total participation base. The goal for 1994 was 4 percent, while actual participation was 1.77 percent.

- The second largest gap between a categorical WBE participation goal and actual WBE participation for 1994 occurs in the goods and services category, which represents roughly 63.1 percent of the participation base. The goal for 1994 was 4 percent while actual participation was 2.16 percent.

- In 1993, state government agencies failed to meet statewide participation goals for women in all four of its contracting categories.

## **Recommendations:**

- The Commission on African American affairs supports Governor Mike Lowry's commitment to conduct a disparity study to examine whether race and/or sex discrimination is limiting the ability of minority-owned and/or white-women-owned firms to do business with the state.
- State agencies and educational institutions should be held accountable for their performance under the various Revised Code of Washington (RCW) and Washington Administrative Code (WAC) provisions regarding contracting and procurement involving minority and women owned businesses. This process should include the periodic review of policies and practices to be conducted by the Office of Financial Management (OFM) and the State Auditor's Office in conjunction with OMWBE.
- State agencies and educational institutions should review their practices and make appropriate policy revisions to ensure full and fair compliance with the various statutes, administrative rules, executive orders and other policy mandates regarding affirmative participation of MBEs and WBEs.
- OMWBE should continue to conduct utilization analyses comparing the number of certified businesses available to perform work in each main category of contracting to the percentage of contracts and dollars awarded to them.
- All prime contractors doing business with the state should be required to view attainment of MBE and WBE goals as a condition of responsive bidding. All state-wide contracts, construction projects, small works, leases for goods and services, personal service and procurement activities should include MBE and WBE goals.
- Action-oriented programs must be developed for MWBE programs and plans at the OMWBE and agency levels.
- Economic Opportunity Forums should be initiated or expanded by the larger state agencies to develop a cooperative program to maximize state contracting opportunities for MBEs and WBEs. The Forums should focus on identifying, educating, assisting and certifying firms throughout the state and providing participants the opportunity to network and familiarize themselves with state contracting procedures and opportunities.

# **The State Agency 1995 Survey Purposes and Procedures**

## **Purposes of the Agency Survey <sup>1</sup>**

Consistent with other studies in this series, there are two main purposes in completing the research. First, the survey was conducted to provide current and reliable data about current state activities. Second, the results will inform the debate on affirmative action as public policy with data on what is and is not being done by state agencies to attract and encourage the participation of minority- and women-owned businesses in their contracting and purchasing activities. To the extent that plans and programs can be improved, the results from the agencies surveyed should lead to ideas for developing new guidelines, policies and practices which can be adopted or followed in order to ensure compliance with the mandates and policies for designing and administering affirmative action plans and programs.

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<sup>1</sup> Data analysis and report preparation were arranged through William D. Bradford, Dean of the School of Business Administration, University of Washington. Primary responsibility for data management and interpretation/report preparation was assumed, respectively, by Kevin C. Harper, BA Computer Services and Professor Thaddeus H. Spratlen, Department of Marketing and International Business.

### **Survey Procedures**

The results reported are based primarily on a survey of state agencies and educational institutions initiated and implemented by James Kelly, Director of the Commission on African American Affairs, during the spring and summer of 1995. Some additional background information is presented from secondary sources. General news and periodical sources have been used along with state agency regulations and guidelines to provide a general context and understanding of the issues surrounding public contracting and purchasing by state agencies.

All four-year institutions, the State Board of Community and Technical Colleges and a sample of all other state agencies were included in a mail survey. The sample included a total of 38 agencies and educational institutions. Survey forms covering construction procurement, purchasing of equipment and supplies, professional (e.g., consulting) services and other purchases of services were sent to each agency director and appropriate college and university administrators during June-July 1995. Agencies responding by mid-September 1995 were included in the tabulations. Fifty-one responses were received, including 13 separate responses from the Department of Transportation.

### **Responses and Limitations**

Considering the detailed information requested in a mail survey, the response rate is very high. The quality of information and detail included in agency responses varied considerably. But the level of overall cooperation in completing the survey was generally high.

Responses of agencies are discussed collectively in this report; not individually. Responses are not weighted. Responses of individual state agencies are not referred to in the report. Because responses were received from a large number and cross section of state agencies, we consider the responses to be representative of agency practices.

### **Analysis**

In future references, when we refer to "state agencies" we include the educational institutions, unless an exception is made and explained. Responses to the survey were categorized by type of contracting and procurement activities. The major categories were construction, professional services, other services and materials, equipment and supplies. In the interest of brevity and the desire to focus on the main characteristics of agency practices, selected questions are summarized across all categories of activities. Response patterns varied considerably across categories of activities. The number of responses received were 43 in the professional services section, 35 in the materials, equipment and supplies section; 32 in other services and 20 for construction contracting.

Cross tabulations and frequencies are summarized across all categories with an emphasis on four topics: agency solicitation/outreach practices; agency-OMWBE involvement; evaluation/selection practices and other issues and policies. A brief section is devoted to each topic.

#### **Agency Solicitation/Outreach Practices**

Placing announcements on public bulletin boards was the most widely reported solicitation/outreach practice with 48 agencies making use of this method. Advertising bid solicitations and outreach to minority and women-owned businesses in newspapers and journals was reported by 31 of the 51 responses received.

Use of targeted media in minority communities and direct contacts with organizations which serve this business sector were even more widely reported. A total of 48 of the 51 agencies reported advertising in newspapers targeted to minorities and women. Eight agencies reported attendance at MWBE functions and advertising which specifies MWBE interest as part of their outreach activities. Only five agencies indicated that their RFPs solicitations were monitored to ensure that they were sent to at least one MWBE. Bidders conferences and submission of bid documents to plan centers were reported by four agencies.

State agency involvement with OMWBE occurs in many different forms. Most frequently reported activities were use of the OMBE directory, verification of bidder status. These activities were reported by 26, 20 and 19 agencies, respectively. Several other activities were reported ranging from work with OMWBE in developing appropriate contract language (11) to making special efforts to consider OMWBE-set goals (6). Even in this important category of activities, 21 agencies did not respond to the question about their OMWBE involvement.

#### **Evaluation/Selection Practices**

In selecting bidders, 34 agencies indicated that they did not tend to use the same contractors on agency construction projects. Previous successful bidding was not a consistent advantage. However, 21 agencies indicated that this did occur.

#### **Other Issues and Policies**

Seven agencies reported that meeting OMWBE requirements is a key factor in determination of a responsive and responsible bid. Most commonly reported conditions included technical and financial specifications as to capability to handle the contract and related performance criteria.



## **How Affirmative Action in Public Contracting and Purchasing Seems to be Working**

Aspects of affirmative action which appear to be working well include the promotion of interest and interest in advertising targeting to MWBEs. Effectiveness in the actual evaluation and in selection of firms is less clear.

Current policies seem to be working somewhat better to include WBEs. Their goals were met during the study period. How this could be adapted to increase utilization of MBEs is something that the agencies must determine.

### **Policy Issues and Challenges**

Policies and practices on advertising, publicity and bid solicitation seem to be applied in just about all the responding agencies. However, utilization and participation levels are not very high for MWBEs. Greater use of plan centers and the adoption of the practices of the most effective agencies would seem to be important challenges which need to be met in order to increase the likelihood of affirmative action goal achievement in the future. Closer monitoring of prime contractors and improved contract language and safeguards for ensuring compliance deserve more consideration.

### **Summary**

This study does not provide a basis for evaluating individual agencies. Clearly some are implementing more effective programs than others. The findings of this analysis of state agency public contracting are consistent with the participation data analyzed earlier. People of color and women do not gain "unfair advantage" over firms owned and/or controlled by white males.

## **Construction Contracting**

All six four-year institutions of higher education and 14 other state agencies responded to the section of the study pertaining to construction contracting. Emphasis is placed on those questions that pertain most directly to the participation of minority and women business firms in the bid and contract award processes.

Only five of the 18 agencies responding on this point administer a small works roster in their contracting process. Most do not, although two of those indicated that this was not applicable to them. Fourteen of the agencies do not break down large projects into smaller projects to encourage broader participation, even when such an arrangement is feasible. However, 12 of the 20 agencies reported varying their practices according to the amount or size of contracts involved.

Competitive sealed bids are the norm in public construction contracting. Fourteen agencies indicated that they follow this practice. Only two agencies did not follow this practice, and four did not answer the question. According to 15 agencies contract awards are made to the lowest responsible and responsive bidder. Only one agency indicated that this was not done. The remaining four did not indicate the standard that they apply.

Among the factors that determine a firm's capability and capacity to perform in construction contracting, work experience was evaluated as "Very Important" by 15 of the agencies and as "Somewhat Important" by one. Four respondents did not provide an evaluation. Local presence and bonding capacity each received a "Very Important" rating by 10 agencies. The importance of other factors such as capital, number of present employees, length of time in business and quality controls varied widely among responding agencies.

With respect to bid solicitation and advertising, 15 agencies did not indicate that they selected newspapers targeted to minorities and/or women. Five did indicate using this method. A similar pattern of response occurred with respect to notifying minority or women organizations — only six indicated such solicitation.

Agencies reported a mixed pattern of evaluating firms for subsequent bids once they have been successful in a bidding process. Six agencies indicated that they tend to use the same contractor, but nine indicated that they did not. Five did not answer the question. However, 15 of the 20 agencies denied giving preference to contractors who have had previous dealings with the agency.

In terms of flexibility, very few variations were reported in the level and type of bonding requirements. Regarding assistance with bonding, insurance or other requirements in the bidding process, only one state agency indicated that they could offer any such assistance to prospective bidders.

## **Purchasing of Materials, Equipment and Supplies**

A total of 35 agencies are included in this category. Expenditure levels ranged from small purchase orders of several hundred dollars to purchases amounting to many thousands of dollars. But even on small purchase orders, agencies were evenly divided regarding whether they vary the bidding and selection process to assist MBEs and WBEs.

Competitive bidding remains as the overwhelming practice among agencies. However, even for the few that indicated the use of sole sources, there was no indication that minority-or women-owned firms were selected in such a procedure.

Work experience was reported once again as the single most highly rated criterion for defining a firm's capability and capacity to perform as a vendor supplier. A "Very Important" rating was indicated by 18 of the 35 agencies. No other criterion received ratings in double digits except a combination of factors specific to agency needs or circumstances. Size of firm, years in business and related factors were rated as somewhat important or not important.

While 15 did indicate that they notified minority and/or women business organizations, even more agencies (19) did not bother to answer the question. Yet this same number of agencies (15) did report that they automatically sent bid requests to certified minority- and women-owned business firms.

Most (21) agencies do not provide any assistance to MWBEs regarding ways of meeting requirements or specifications for vendors and suppliers.

## **Professional Services**

The largest number of agencies (43) responded in this category. Of this number 33 indicated that they use professional consulting services. However, responses regarding the encouragement or actual participation of minority- and women-owned firms indicated little that could be considered affirmative. Work experience was rated as "Very Important" in the selection of professional service providers by 34 of the responding agencies. Only 10 reported advertising in newspapers targeted towards minority and women business organizations. Thirty-three of the agencies did not respond to the question, but 15 did report that they send notices to such organizations. Several agencies indicated that they use contract language to encourage prime consultants to use minority or women as sub-contractors.

## **Other Services**

This category of spending by state agencies includes temporary personnel, responses to repair, emergency and short term agency needs. However, the category needs to be defined more explicitly, since some agencies included certain types of consulting services in this category. The lack of clarity in the scope of the category may have contributed to the quality and completeness of agency responses.

Patterns of outreach to encourage minority and women participation were similar to those reported for professional services. Of the 32 agencies responding 24 did not check the question regarding advertising to minority- and women-owned firms. Only 8 did such advertising and the numbers did not change much regarding the notification of organizations which serve these firms – 21 omitted a response and 11 use such means of outreach.

## **General Policies and Practices**

Data provided by participating state agencies in the survey conducted by the Commission on African American Affairs and analyzed with the cooperation of the School of Business Administration, University of Washington show that very few of the contracting, purchasing and personal service contracts of the agencies actually go to or through minority- and women-owned businesses. Bid requests are not automatically sent to these businesses and few special/affirmative efforts or steps are taken by most agencies to ensure the full and fair participation of such firms in the contracting, procurement and purchasing programs of the agencies.

### **Recommendations:**

#### *General Policies and Practices*

\* State agencies should be held accountable for their performance under the various RCW provisions regarding contracting and procurement involving minority and women-owned businesses. This process should include the periodic review of policies and practices as represented by the 1995 survey along with the consideration of oversight responsibilities by the Office of Financial Management or the State Auditor's Office in conjunction with the Office of Minority and Women Business Enterprise.

\* State agencies should review their practices and make appropriate revisions to ensure full and fair compliance with the various statutes, executive orders and other policy mandates regarding the affirmative participation of minority and women-owned businesses in the allocation of expenditures and investments by state agencies.

### **Findings:**

#### *Construction Contracting*

Most agencies appear to put forth limited effort in taking steps to encourage minority participation in construction contracting. Of the 20 responding in the study, only five administer a small works roster and 15 do not break down large projects into smaller projects even when such an arrangement is feasible. With respect to bid solicitation and advertising, 15 of the 20 did not indicate using newspapers targeted to minorities and/or women and 14 omitted a response regarding sending notices to minority or women organizations. Agencies also have or exercise very limited flexibility in responding to special problems of minority- and women-owned firms with respect to bonding, insurance or business assistance.

## Findings:

### *Purchasing of Materials, Equipment and Supplies*

Purchasing represents in dollar amounts and types of transactions an extremely diverse category of spending. But the general pattern of responses regarding the encouragement of minority and women participation in bidding was continued. There was not much variation in the bidding process. However, 15 did indicate that they sent solicitations to minority and women organizations. The same number sent bid requests regularly to qualified MWBEs.

## Findings:

### *Professional Services*

Although the largest number of agencies responded in this category of state spending, less than one-third reported outreach activities to MWBEs. It is of interest that 33 of the agencies did not answer the question regarding advertising in newspapers targeted to reach minority and women business owners. However, 15 did indicate that they at least send bid notices to minority and women organizations.

## Findings:

### *Other Services*

Patterns of responses of this category of spending are similar to those reported for professional services. Indeed there is so much overlap in the way in which some agencies regard the categories that make separating them ambiguous.

A total of 32 agencies responded. Outreach efforts that could be considered affirmative included about one-third or fewer. Only eight used targeted advertising and 11 reported notifying organizations that serve or reach MWBEs.

**Parts 1 and 2 of this report series each included a position paper. In lieu of a position paper for Part 3, the Commission is including a model policy that can be used by state agencies and other entities to assist minority- and women-owned businesses. This model was provided by the Washington State Department of General Administration, an agency that the Commission finds to be a good promoter of opportunity for minority- and women-owned firms seeking to do business with the state.**

## DEPARTMENT OF GENERAL ADMINISTRATION

### Minority and Women's Business Enterprise Participation Plan

GENERAL: The Office of Minority and Women's Business Enterprises (OMWBE) establishes annual participation goals for all state agencies, including the Department of General Administration (GA). Goals are a percentage of the total dollars expended in the reporting base. The Director of GA has established agency goals at 10% and 8% for all procurement activity. These goals will be used for GA, and supplement the OMWBE goals:

GA GOALS				OMWBE GOALS			
Construction/Public Works	MBE	10%	WBE 8%	MBE	10%	WBE	6%
Architect/Engineering		10%			10%		6%
Purchased Goods		10%				8%	4%
Purchased Services		10%			10%		4%
Personal Services		10%			10%		4%

OVERALL RESPONSIBILITY: The Director, Deputy Directors, and Assistant Directors have responsibility to achieve the annual goals, taking whatever action is necessary as authorized by law. Each Assistant Director will appoint a MWBE liaison to assist in implementation of the MWBE program for their respective Division.

OBJECTIVES: This plan represents the following MWBE objectives for GA:

- 1) Emphasize marketing, outreach, access, and technology to encourage participation from MWBE and small businesses across the state. Simplified access, marketing and outreach will be a preferred approach for increasing participation during bidding and award.
- 2) Increasingly awards based upon best prices and products, while continuing commitment and expectation for MWBE and small business participation. This plan will encourage and require competitive pricing consistent with the marketplace for procurements and contracts, using techniques such as increased access, participation, selective goal placement, rejection of bids to negotiate, and other award strategies;
- 3) Increase the emphasis on state-wide projects and contracts. This plan will encourage and measure MWBE awards on state contracts, projects, leases and activity for state customers.
- 4) Recognize the economic and business development priorities of the State of Washington, in addition to traditional MWBE participation. This plan will recognize economic development, business development, and increasing MWBE participation, using a wider range of assistance and approaches. Techniques such as flexible award strategies, vendor-proposed plans for goal attainment over life of contract, access, outreach, training, and assistance efforts will contribute towards that priority.

5) Increase flexibility and increase Assistant Director (AD) accountability for MWBE participation in each measurable component of the plan. This plan will provide monthly MWBE data, quarterly evaluations, and Assistant Director responsibility for goal achievement.

**ACCESS AND OUTREACH:** Access and outreach are the preferred approach to building MWBE participation. Marketing, targeted recruitment, outreach, technology and assistance will be priorities for the divisions and for the Business Development Manager (BDM). During the past two years, GA has done a lot of outreach and marketing with outstanding results. Outreach insured that businesses across the state knew about solicitations and participated in bidding. Since this has worked so well, we will continue this approach. For 1995-1996, these efforts include:

Increase the use of local minority and community media to advertise bid opportunities and to describe how to access state opportunities. The BDM will advise divisions and provide information about these resources. Divisions will determine the appropriate media to use for each situation, in consultation with the BDM and with Information Officer (PIO). The PIO will have final review and approval, to assure all media use is consistent with agency objectives.

Increase the use of technology to provide easier access to GA opportunities. Each service with business opportunities will work with Information Systems to identify a FOD application that would increase access, and will pursue development for 1996. Each division will work with Information Systems to investigate Internet and other appropriate access through technology options.

Continue visibility in the supplier community. The BDM will participate statewide and regionally in government forums, trade shows and marketing shows. Additionally, Divisions and the BDM will each continue one-on-one supplier meetings, brown bag forums, workshops and conferences that help businesses understand opportunities available and how to access them.

Continue with visibility on both a state and national level regarding MWBE issues, innovations and directions. The BDM will continue participation in government forums and conferences at a local, state or national level to discuss MWBE directions, develop new strategies and initiatives, and describe GA program activity.

The BDM will continue participation in statewide organizations that promote and discuss business and economic development, MWBE, and business accessibility concerns. In addition, the BDM will encourage and advise each Assistant Director of appropriate opportunities to participate in such organizations. These include such organizations as the Washington State Hispanic Chamber of Commerce, Northwest Minority Suppliers Development Council, Private Industry Councils, and Economic Development Councils.



In 1996, GA will continue to sponsor "How To Do Business" seminars in locations throughout the state, conjointly with CTED, DOT and other state agencies. Each business service will work with GA Public Relations to develop presentations and to prepare marketing materials.

**PARTICIPATION:** GA seeks to increase MWBE and small business participation during solicitations. For 1995-1996, we will examine participation levels in both solicitation response and award, and find ways to improve participation levels. In addition to other measures and objectives, the following will work towards determining how effective we can be at encouraging participation during our solicitation processes:

During 1996, the BDM will develop a plan to measure participation levels in bidding solicitations. For certain targeted solicitations which are pre-arranged with the Assistant Directors, the BDM may measure participation levels during pre-bid conferences, at time of bidding, and at award. This will identify whether MWBE's are finding access to and participating in the opportunities that are available. Differences in participation may signal areas that require increased emphasis and this information will be used to help fine-tune marketing, outreach and access.

The BDM will survey MWBE vendors, lessors, and firms to determine effective access and marketing forums, and to identify any business participation barriers.

Assistant Directors are responsible for evaluating internal procedures to insure that barriers to participation are identified and resolved. Procedures such as pre-qualification, bonding, experience requirements, and bid consolidations should be carefully reviewed to insure that barriers to small business and MWBE participation are not inappropriately established. The BDM may join ADs to identify and discuss potential barriers.

The BDM may examine the trend towards participation of new businesses, who have not previously worked with GA before, to determine if there is an increasing level of new firms participating in opportunities.

**STRATEGIES FOR SOLICITATION AND AWARD:** We will increasingly award based upon the best prices and products, while continuing commitment and expectation for MWBE participation. Some of our most competitive suppliers are MWBE firms. GA experience proves that MWBE firms are competitive and can provide some of the best products and pricing in the market. Each Assistant Director may use a range of different strategies to promote best pricing and best product, while maintaining high MWBE participation. These should be considered and reviewed prior to significant solicitation, with the assistance from the BDM, the Deputy Director and the Attorney General (AG) as appropriate.

Requiring goals on contracts and using goals as a condition of responsiveness. Historically, it is proven that mandated goals which are a condition of responsiveness have been highly effective. This approach is a preferred strategy to insure MWBE participation.

Using goals as the standard approach. All statewide contracts, projects, leases and procurement activity should have MWBE goals of at least the state mandated level unless the Assistant Director is satisfied that such MWBE goals are not appropriate for the individual solicitation.

Encouraging and requiring market-based competitive pricing. Current law requires a pricing preference when MWBE goals are part of a solicitation and MWBE participation is subsequently provided in the bid. This will occasionally disrupt competitive pricing in markets, particularly where there is a high availability and participation. Therefore, other approaches are available in those situations. Specifically, those approaches are described below, and may include removing goals from the solicitation; and rejecting bids with the intent to negotiate pricing.

Removing goals in commodity or service markets with high availability. Assistant Directors may authorize that no goals appear on a solicitation if the marketplace and MWBE availability for the commodity or project supports this strategy. A clear justification and market analysis should support that this commodity area or project has a "level playing field" and that MWBE availability is well above state mandated goals. This should include consultation with the BDM and the Deputy Director.

Rejecting bids to negotiate pricing where lower prices are documented in the market. Assistant Directors may authorize that all bids be rejected in cases where competitive, market-based pricing was not achieved, and that GA may enter negotiations to achieve appropriate, market-based pricing. This must be done in compliance with existing statute, and should be done in consultation with the AG, BDM and the Deputy.

Lowering goals where MWBE availability is severely limited. Assistant Directors may authorize that lower goals or no goals be placed on a solicitation where past experience and current availability indicates that goals are not attainable and where goals discourage reasonable levels of competition. This should be done in consultation with the BDM. In such cases, the BDM may suggest the alternative of targeted recruitment and outreach assistance.

Using regional solicitations to increase MWBE participation. In certain solicitations, MWBE availability may be greater within certain regional jurisdictions. Assistant Directors may encourage regional solicitations, where it is determined in consultation with the BDM that a regional solicitation would increase the likelihood of both a competitive market and MWBE participation. The different regions may contain higher MWBE goals, if a specific region has higher availability.

Providing assistance for partnerships and other business solutions to MWBE participation. In solicitations, we must continue to provide assistance for potential bidders to encourage MWBE participation. With prime vendors, the BDM may offer assistance in innovative ways to reach participation levels for the contract or project. In markets where there has been low MWBE participation, we will consider alternatives such as joint ventures, partnering, mentorships and other MWBE business development plans. Such plans and approaches should be developed and discussed with the BDM.

Accepting plans for goal attainment over life of contract. In markets where there is low MWBE availability, the AD may consider encouraging or accepting plans that allow a prime vendor to develop a MWBE supplier over the course of the contract, with the promise that MWBE participation will be achieved at the agreed-to levels by the end of the contract term.

Using business development in lieu of MWBE participation where no MWBE availability exists. In certain commodities or markets, MWBE participation may not be available. The BDM and the Assistant Director may determine that this situation exists. Economic Development activity and business development activity of a broader nature may be encouraged instead of goals, as a way of building MWBE participation and capacity over time. These efforts should be done with the BDM, the AD and the AG working together to determine appropriate activity.

**CONTRACT ADMINISTRATION:** Successful administration of MWBE in the contract depends on careful contract language and compliance:

Once a contract is awarded, divisions are responsible for contract compliance and ensuring the contractor meets stated provisions.

Extensions will be measured for MWBE participation, and carry the same goals as new contract awards. In evaluating existing contracts for extensions, consideration is to be given towards MWBE participation. Given the requirements of cost-competitiveness, the contractor should also be held to MWBE participation as with new solicitations. The contractor should be asked to renew or increase MWBE participation. Goals should be added if none exists. If departmental goals are not incorporated, this should be justified through a documented analysis of the contract and market conditions.

Contract language should eliminate substitution of MWBE firms for non-MWBE firms, unless it can clearly and unequivocally demonstrated to the BDM satisfaction that no otherwise qualified MWBE contractor exists in the state who is willing and capable of performing the remainder of the MWBE portion of the contract.

Contract language should be reviewed, to insure that appropriate language is used in the contract to represent the MWBE requirements. We should utilize OMWBE solicitation language in bid documents, unless it is clearly not applicable. The Office of Financial Management (OFM) as similar language that is recommended for personal service contracts. The Assistant Director will review language for project, lease or contract solicitation, along with the BDM and the AG to insure appropriate language is considered.

**BUSINESS PLAN:** Each Assistant Director will prepare an annual plan detailing the significant division activity for the upcoming year, the division policies and procedures for business participation and MWBE, and the strategies the division will use to achieve participation and award at the GA goal level. This plan will be submitted for review by the BDM, Deputy and Director. It will also be the basis for quarterly reviews of progress.

All divisions will include:

a list all significant contract, leases or project activity expected during the upcoming year; identify related dollar value, term, MWBE and profile of current suppliers for that activity; identify activity where significant marketing/outreach activity from the BDM is requested.

Each business service will also include:

- all activity as identified above, including any state-wide activity
- a plan for technology access improvements that will be pursued during the coming year
- a plan to improve outreach at the Division level with small business suppliers
- a plan to improve and participate in "How To Do Business" forums

**ACCOUNTABILITY:** The previous requirement that ADs must direct goals on every purchase is replaced in this OMWBE plan, with an increased flexibility and new accountability. Assistant Directors now have greater flexibility to use various strategies on solicitations but with higher levels of accountability to the Director for achieving MWBE participation. Clearly, the most effective way to accomplish award is through mandated goals and condition of responsiveness requirements. However, MWBE award and participation measurements will be used to insure success with this increased flexibility.

First, the MWBE participation will be graphically displayed on monthly reports to Executive Management and to Management Team.

Secondly, each division will be measured in two ways:

- division expenditures will be measured for an average of 10/8 participation.
- average level of MWBE dollars awarded on statewide contracts and projects managed by the division will be measured, reflecting the importance of state-wide contracts that serve GA customers.

Quarterly reviews will be performed, with the Director, Deputy, BDM and AD. These quarterly reviews will use the Annual Business Plan as a guiding document, and will include discussion of the following items:

- evaluation of MWBE participation and award for both internal division expenditure and statewide contracts and projects,
- evaluation of contract extension activity, and increases in MWBE award through extension negotiation
- review of business development initiatives and strategies that divisions used to achieve participation. Some divisions may find that business development initiatives will be considered in some solicitations. Plans and efforts in this regard will also be considered.
- discussion of any existing barriers that the Assistant Director of BDM has identified. This will be done to identify any efforts that the BDM can pursue to minimize or eliminate any GA barriers that can be identified.

- review of upcoming activity. The AD will identify upcoming activity, expenditure plans and significant contract work for the period ahead, with strategies and approaches identified. This assessment will identify target recruitment and activity for the BDM during the upcoming period.

Should these measures show consistent achievement and improvement, the division will continue to self manage MWBE strategies for goal attainment. Should an Assistant Director fail to meet the 10/8 participation, MANDATED goals will be reestablished for that division, and new strategies will be developed in coordination with the BDM to attain these goals.

**COMPLAINT INVESTIGATION AND RESOLUTION:** The BDM will manage complaint resolution for complaints from a MWBE firm. Where appropriate, the BDM will defer to internal Division protest or complaint resolution procedures.

If complaints are received by OMWBE concerning GA, the OMWBE will forward those to the BDM for resolution.

Likewise, complaints received within a division will also be immediately forward to the BDM. The Assistant Director will work with the BDM to determine appropriate resolution steps, and will work with the BDM to reach informal resolution. If the informal resolution process fails to resolve the complaints, a formal dispute resolution procedure may be used. The BDM will work with the Director to establish a team and process for formal dispute resolution. That team may include the BDM, the AD, the complainant, the AG and/or OMWBE.

**SMALL PROCUREMENT:** Procurements less than \$35,000 offer opportunity to enhance MWBE participation on division expenditure. Such procurements, however, are under the discretion of the Assistant Director and will be measured only in so far as they contribute to total Division expenditure and MWBE participation averages. Small personal service contracts also offer important opportunities for certified MWBE firms and, where possible, such procurements should be targeted to MWBE participation.

**PARTICIPATION REPORTING:** OMWBE receives participation data electronically through the Agency Financial Reporting System (AFRS), based on expenditure information submitted by the department. Assistant Directors must ensure that expenditures from vendors to certified subcontractors are captured and reported to the Comptroller so they can be accurately recorded. OMWBE provides a monthly progress report to the department BDM who, in turn, provides a detailed report with a listing of current certified vendors that GA has conducted business with for the preceding month. Assistant Directors are expected to ensure this data is reviewed in detail, and to provide the BDM with any revised information.